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Vol. I

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 28

THE BROTHERHOOD OF BAILROAD TRAINMEN, ENTERPRISE LODGE No. 27, ET AL., PETI-TIONERS,

28.

TOLEDO, PEORIA & WESTERN RAILROAD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 23, 1943.

CERTIORARI GRANTED APRIL 19, 1948.

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IN THE

Supreme Court of the United States

Остовев Тевм, А. D. 1942.

No.

HE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL.,

Petitioners,

vs.

TEDO, PEORIA & WESTERN RAILROAD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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TOLEDO, PEORIA & WESTERN RAILBOAD,

Plaintif-Appellee,

THE BEOTHERHOOD OF RAILBOAD TRAINMEN, ENTERPRISE LODGE NO. 27, M. AL., Defendants Appellants.

JUL 3-1942

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

TRANSCRIPT OF BECORD FILED MARCH 6, 1942.

DOCKETED MARCH 6, 1942.

PRINTED RECORD.

In the

United States Circuit Court of Appeals For the Seventh Circuit

No. 7951

TOLEDO, PEORIA & WESTERN RAILROAD, Plaintiff-Appellee,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL.,

Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

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America, within and for the Northern Division of the Southern District of Illinois, held in the city of Peoria, in said Division and District, before the Honorable J. Leroy Adair, one of the Judges of said Court, on Monday, the 20th day of October, in the year of our Lord One Thousand Nine Hundred Forty-nine, and of the Independence of the United States of America, the one hundred and sixty-sixth.

Present:

J. Leroy Adair, United States District Judge.

Paul E. Ruppel, United States Marshal.

Howard L. Doyle, United States Attorney.

G. W. Schwaner, Clerk, United States District Court.

Attest:

G. W. Schwaner; Clerk.

Jan. 3, 4 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Illinois,

Northern Division.

Toledo, Peoria & Western Railroad, vs.

The Brotherhood of Railroad Trainmen, Enterprise Lodge, No. 27, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Enginemen Robert Mason Lodge No. 926, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, ·Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, J. L. Feuger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, .Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster.

Civil Action, No. P-149.

Be it remembered, that heretofore, to-wit: on the 3rd day of January, in the year of our Lord One Thousand Nine Hundred Forty-two, that being one of the days of the October, A. D. 1941 Term of the District Court of the United States for the Northern Division of the Southern-District of Illinois, there was filed in the office of the clerk of the said court a certain Complaint, which said Complaint was and is in the words and figures following, to-wit:

- 5 IN THE DISTRICT COURT OF THE UNITED STATES.

 * (Caption—P-149) * *
- 6 To the Honorable Judges of the District Court of the United States for the Southern District of Illinois, Northern Division:

COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff, by its undersigned attorneys, and files its complaint against the Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge 926, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, and others, defendants hereinafter named, and for cause of action shows to the Court:

The plaintiff, Toledo, Peoria & Western Railroad, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office in the City of Peoria, Illinois; for years past it has been and now is the owner of and is engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa, through the State of Illinois, with a branch line extending from LaHarpe in Hancock County, Illinois to Lomax in Henderson County, Illinois where it connects with The Atchison, Topeka and Santa Fe Railway Company, and also a line of road extending from Hamilton, Illinois to Warsaw, Illinois; it has been and is now a common carrier of freight by railroad within the State of Illinois, and into the States of Iowa and Indiana, and, in connection with other roads, is engaged in the business of transporting freight between points, within the State of Illinois and between points in the State of Illinois and other states; that it has for many years last past and is now engaged in handling both intrastate and interstate traffic: that it has been and is now engaged in interstate commerce under the laws of the United States; that it is a railroad

corporation engaged in the handling of both intrastate and interstate traffic as a common carrier subject to the provisions of an Act of Congress entitled "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto. (2) Plaintiff has its principal office in the City of Peoria in the State of Illinois, and its line of railroad extends eastward from Peoria through the counties of Tazewell, Woodford, MacLean, Livingston, Ford and Iroquois to Effner, Indiana, and extends westward from Peoria through the counties of Peoria, Fulton, McDonough, Hancock and Henderson; and that it is and was at the times hereinafter mentioned and is now a common carrier of freight by railroad, subject to the provisions of the Acts of Congress known as "An Act to Regulate Commerce" and Acts amendatory and supplementary thereto, and the Transportation Act of 1920 as amended.

(3) Plaintiff is also a common carrier subject to the Railway Labor Act of the United States as amended, and it is also, as such common carrier, subject to and included within the words "war utilities" as defined by the Federal Statutes as amended, being Sections 101, 102, 103, 104 and 105 of Title 50 of the U. S. Code of the Act of Congress, April 20, 1918, Federal Statute, as amended November 30.

1940, Chapter 296, 54 Statute, 1220.

(4) Plaintiff, in connection with its business as common carrier and railroad has established and now maintains and operates a railroad extending from Effner, Indiana through the State of Illinois to Keokuk, Iowa, with various branches or spur lines connecting with other railroads, and has also established and now maintains and operates station facilities at various cities and villages located upon its line of road; it has also established and now maintains and operates large terminal facilities in the City of East Peoria, Illinois and adjacent territory, including terminal facilities, round house, machine shops, yards, turntable, repair shops, blacksmith shops, and all other terminal

8 facilities required for its use in handling its business as a common carrier engaged in interstate commerce, including the receiving, making up, dispatching and operation of its trains so engaged in interstate commerce; that for many years last past it has operated regular freight trains in interstate commerce; and that its engines and equipment are used regularly in interstate commerce, and, in many cases, the engines and equipment are operated between Peoria and points without the State of Illinois in regular service; that it has continued such operation, except as it has been prevented from such operation, as hereinafter stated, by the unlawful acts of the defendants or some one or more of them, unto the present time, and that

it expects to continue such operation to the extent of its ability except as it is interfered with and prevented from performing such services by the unlawful and unauthorized acts of the defendants or some one or more of them, as

hereinafter stated.

(5) The Brotherhood of Railroad Trainmen, hereinafter referred to as BRT, defendant herein, in a voluntary labor organization and F. W. Covle is its Vice President; defendant Brotherhood of Locomotive Firemen and Enginemen, hereinafter referred to as B. of L. F. & E., is a voluntary labor organization and W. C. Keiser is its Vice President; W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Sibenthal, J. L. Feuger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster are former employees of this plaintiff now on strike and are made parties defendant as such.

9 (6) Plaintiff shows to the Court that it had an investment in excess of \$5,500,000.00 as of December 31, 1940, which investment has been increased since that date, as shown by its general balance sheet as of that date; that the annual payroll of plaintiff for the year 1940 was in excess of \$1,000,000, and that the payroll of plaintiff for the twelve (12) months ending November 30, 1941 was

in excess of \$1.080,400.00.

(7) That prior to the 4th of October 1940 plaintiff had no contract with either the Brotherhood of Railroad Trainmen or the Brotherhood of Locomotive Firemen and Enginemen, defendants herein, with reference to conductors, trainmen, vardmen, (foremen, helpers and switchtenders) or locomotive engineers or firemen, hostlers or hostler help-

ers working upon its road.

(8) That on October 4th and 5th, 1940 an election was held, under the provisons of the Railway Labor Act as amended and under the supervision of the National Mediation Board, among conductors, trainmen and yardmen (foremen, helpers and switchtenders) employed by plaintiff for the purpose of permitting said employees to designate their representatives; that the trainmen and yardmen employed by plaintiff at such election elected the Brotherhood of Railroad Trainmen to represent them, and

the vote of the conductors showed a tie vote as between the Brotherhood of Railroad Trainmen and the Association of Train Service Employees of Toledo, Peoria & Western Railroad; that Mediator Murray of the National Mediation Board notified plaintiff of the result of such election by

letter dated October 5, 1940.

That under date of October 11, 1940 plaintiff notified the BRT of intended changes of rules and working conditions for brakemen and yardmen; that by letter dated October 17, 1940 and received by Plaintiff October 18, 1940 General Chairman Newdigate of BRT, and General Chairman Beeson for B. of L. F. & E. notified plaintiff of their intended changes in rates of pay, rules and working conditions.

Under date of October 21, 1940 received October 24, 1940 the National Mediation Board notified plaintiff that the BRT had been certified as a representa-

tive of the trainmen and vardmen.

(10) On November 27th and 28th, 1940 a new election was held for conductors employed by plaintiff resulting in a notification from Mediator Murray of the National Mediation Board under date of November 28, 1940 that the BRT had been elected as representative of the conductors. Plaintiff received certification from the National Mediation Board certifying that the BRT was the representative of the conductors under date of December 6, 1940. Under date of December 17, 1940 plaintiff notified the BRT of intended change of rates of pay, rules and work-

ing conditions.

(11) An election was held October 5th to 7th, 1940 by the firemen, hostlers and hostler helpers resulting in the selection of the BofLF&E, of which said selection plaintiff was notified by Mediator Murray under date of October 7, 1940. Under date of October 11, 1940 plaintiff notified the BofLF&E of intended change of rates of pay, rules and working conditions for firemen, hostlers and hostler helpers. Under date of October 17, 1940 Messrs. Newdigate and Beeson representing said BRT and BofLF&E notified plaintiff of intended changes for firemen, hostlers and hostler helpers; under date of October 21, 1940 the National Mediation Board certified that the BofLF&E was the representative of the firemen, hostlers and hostler helpers on plaintiff's road.

Under date of October 10th and 11, 1940 an elec-

tion was held by the engineer's employed by plaintiff and notice was received from Mediator Murray under date of October 11, 1940 that the BofLF&E had been elected as representative of the engineers. Under date of October 14, 1940 plaintiff notified the BofLF&E of intended change.

of rates of pay, rules and working conditions for the engineers, and under date of October 17, 1940 Messrs.

Newdigate and Beeson notified plaintiff of intended change in rates of pay, rules and working conditions to apply to engineers. A certification from the National Mediation Board dated October 21, 1940 and received October 24 1940 by plaintiff certified that the BofLF&E was elected to represent the engineers employed by plaintiff.

That under date of November 18, 1940 the said (13) F. W. Coyle, Vice President of BRT, and C. H. Keenan, Vice President of BofLF&E served upon plaintiff their proposed schedules of rates of pay, rules and working conditions, which said proposals were discussed by representatives of plaintiff with the representatives of said Brotherhoods; that by agreement the conferences were continued from time to time until December 17, 1940 at which time plaintiff served on said representatives of said BRT its proposed rates of pay, rules and working conditions for conductors and brakemen, which said schedule was discussed with said representatives and the conference was then continued by agreement to January 7, 1941 at which conference plaintiff served its proposed rates of pay rules and working conditions applying to engineers, and firemen upon the representative of said BofLF&E. Conferences were held with reference to said proposals on January 7th and January 8th, 1941, on which latter date the representatives of said Brotherhoods advised plaintiff that they would not consider the proposals of plaintiff and plaintiff advised said Brotherhoods that their proposals could not be accepted as presented; said representatives of said Brotherhoods at said time advised said plaintiff that they would not make any changes in their proposals and that they would invoke the services of the National Mediation Board which was later done by said Brotherhoods.

(14) Under date of January 14, 1941, said National Mediation Board notified plaintiff that the BRT and BofLF&E had invoked the services of said Board and invited plaintiff to furnish said Board with such

information as it desired to furnish.

(15) Under date of March 17, 1941 Mediator Murray of the National Mediation Board came to Peoria and conferences were had with A. B. Miller, Vice President of the BofLF&E and also B. W. Fern Deputy President of the BRT, and John F. Murray, Mediator, which conferences were held continuously until April 15, 1941, except for the week of March 24, 1941 to March 31, 1941. April 15, 1941 plaintiff asked that Mediation be suspended for thirty (30) days to enable plaintiff to prepare new proposals following which the Mediation Board suspended mediation indefinitely. Under date of May 14, 1941 plaintiff wrote National Mediation Board that its new proposals were ready and that it wished to proceed with mediation; under date of May 17, 1941 the Secretary of said National Mediation Board advised that the Mediator was not available; under date of June 5, 1941 plaintiff again requested said Board to resume mediation and received the reply that Mediator was not available; under date of July 3, 1941 plaintiff again requested resumption of mediation and received a reply from said Board that Mediator was not available. Under date of September 8, 1941 Mediator Murray returned to Peoria and Mediation was resumed with F. W. Coyle, Vice President of BRT, and C. W. Keiser, Vice President of BofLF&E, before Mediator Murray; conferences continued until October 16, 1941 when the same were recessed to permit plaintiff to prepare new proposals. Under date of November 3, 1941 mediation was resumed by Mediator Murray and the representatives of said Brotherhoods and plaintiff and said new proposals were discussed. Under date of November 6, 1941 it became evident that the Brotherhoods and plaintiff could not get together and plaintiff requested the Brotherhoods to suggest rates of pay for which they would accept plaintiff's proposals of rules and working conditions but said Brotherhoods refused.

13 (16) Under date of November 7, 1941 Mediator Murray handed to the representatives of said Brother-hoods and plaintiff arbitration proposals, said proposals being submitted at a joint conference, which said proposals for arbitration were declined by said Brotherhoods and plaintiff. Under date of November 17, 1941 plaintiff wrote said National Mediation Board declining arbitra-

tion and suggesting the appointment of an impartial commission to investigate. Under date of November 21, 1941 said National Mediation Board by joint letter to Superintendent Best of Plaintiff and F. W. Coyle, Vice President of BRT in case A903, and by joint letter to H. H. Best, Superintendent of plaintiff, and W. C. Keiser, Vice President of B of LF&E, (case A 904) advised that said Brotherhoods and plaintiff had both declined in writing to arbitrate as requested by Mediator Murray under date of November 7, 1941, and calling attention to Section 5, 1st (b) of the Railway Labor Act as amended, and served notice upon both Brotherhoods and plaintiff that its services, except as provided in Section 5, 3rd, and of Section 10 of the Railway Labor Act had on said date November 21, 1941, been terminated under the Railway Labor Act, copies of which said joint letters are hereto attached and made a part hereof and marked Exhibits "A" and "B" respectively.

(17) Plaintiff further shows to the Court that as soon as plaintiff was notified by said Mediator Murray that the BofLF&E and BRT had been designated as the representatives of said employees on plaintiff's road that plaintiff at once recognized said Brotherhoods as the representatives of said men for the purpose of negotiating with reference to rates of pay, rules and working conditions as required by the Railway Labor Act and has continuously since that time so recognized said Brotherhoods

as such representatives.

(18) Plaintiff further shows to the Court that it has in good faith at all times exerted and used every reasonable effort to make and maintain agreements con-

cerning rates of pay, rules and working conditions and to settle all disputes in order to avoid any interruption of interstate commerce growing out of the dispute between plaintiff and employees as required by said Railway Labor Act, and that it has in good faith at all times since the designation of said Brotherhoods as the representatives of its said employees endeavored to reach an agreement with reference to rates of pay, rules and working conditions applying to its said employees, but that notwithstanding all efforts on the part of the plaintiff in good faith to reach and maintain agreements with reference to rates of pay, rules and working conditions with said Brotherhoods so representing said employees it has

been unable to reach agreements which are satisfactory

to said representatives and plaintiff.

(19) Plaintiff further shows to the Court that since being notified by said National Mediation Board of the termination of its services as mediator, as hereinabove stated, plaintiff was and is willing to attempt to reach agreements covering rates of pay, rules and working conditions which are fair both to its employees and itself; that it has since the notification of the termination of the services of said National Mediation Board made repeated efforts to reach agreements which are satisfactory to said Brotherhoods and its employees but has been unable to secure such agreements.

(20) Plaintiff further shows that it has in good faith complied with all of the provisions of the Railway Labor. Act in endeavoring to reach an agreement with the Brother-

hoods and its employees.

(21) That thereafter and some time prior to December 8, 1941 plaintiff was advised that the said Brotherhood of Railroad Trainmen by F. W. Coyle, its vice presi-

dent, and local representatives of said Brotherhood, and Brotherhood of Locomotive Firemen and Enginemen by W. C. Keiser, its Vice President, and local representatives of said brotherhood, caused to be taken a strike ballot or vote of classes of employees of plaintiff represented by said Brotherhoods; that under date of December 6, 1941 H. H. Best, Superintendent of plaintiff, addressed a joint letter to the said W. C. Keiser, Vice President of B.ofLF& E. and F. W. Coyle, Vice President of BRT, advising that plaintiff understood that a strike vote had been taken by said employees, and requesting that at least fifteen (15) days notice of the date and hour on which said strike would become effective should be given for the purpose of protecting the shippers of interstate commerce and vital industry and communities dependent upon plaintiff for transportation service; that on said date, but after the writing of said letter, plaintiff received a wire from the Secretary of the National Mediation Board notifying plaintiff that said Board had been advised that enginemen, trainmen and yard service employees of plaintiff would be withdrawn from service on Tuesday, December 9, 1941 at 11 o'clock a. m., which said message was received later in the afternoon of Saturday, December 6, 1941; that no word was received from the said Brotherhoods as to the

calling of said strike until near twelve o'clock noon on December 8, 1941, Monday, that a strike would be called effective at eleven o'clock a. m. on Tuesday, December 9, 1941, which said notice was received less than twenty-four (24) hours from the time fixed for said employees to leave the service of plaintiff. That thereafter at about eleven o'clock a. m. on Tuesday, December 9, 1941, a letter was received by plaintiff's superintendent from the said Coyle and Keiser advising that said strike called for eleven o'clock a. m. on Tuesday, December 9, 1941, had been postponed at the request of the Mediation Board. .

(22) That thereafter conferences were held be-

tween the representatives of said Brotherhoods and the National Mediation Board and representatives of plaintiff, and further conferences were held at Peoria between the representatives of said Brotherhoods and representatives of plaintiff in an endeavor to reach an agreement concerning rates of pay, rules and working conditions affecting the class of employees represented by said Brotherhoods; that plaintiff in good faith used every endeavor to reach agreements with said Brotherhoods but that all offers submitted by plaintiff were rejected by the said Brotherhoods; that thereafter by letter dated December 20, 1941 mailed December 21, 1941, plaintiff advised said Brotherhoods and its employees that its schedule of proposed rates of pay, rules and working conditions submitted to said Brotherhoods would become effective at 12:01 A. M. on December 29, 1941, which said proposals as to rates of pay so submitted by plaintiffs to said Brotherhoods on November 3, 1941 were increased 76¢ per day to apply until December 31, 1942.

(23) That thereafter under date of December 28, 1941 the said W. C. Keiser and F. W. Coyle, Vice President of said Brotherhoods, addressed a letter to the plaintiff's superintendent, which was received December 28, 1941 at 10:15 A. M. advising that employees of the classes represented by them would be withdrawn from service at 6:00 P. M. on Sunday, December 28, 1941; that following said letter practically all members of the classes of employees represented by said Brotherhoods did withdraw from the service of plaintiff at 6:00 P. M. on Sunday, December 28, 1941; that said employees have since said time refused to return to their respective positions with

plaintiff.

(24) Plaintiff further shows to the Court that prior to the calling of said strike by said Brotherhoods that plaintiff was engaged in the handling of interstate traffic between the State of Illinois and other states and through the State of Illinois from and between other states, which said traffic so handled by plaintiff consisted of war ma-

terial, including arms, armaments, ammunition, livestock, clothing, food, food stuffs, fuel supplies, muni-

tions, and other articles and ingredients thereof intended for, adapted to, or suitable for the use of the United States and Associate Nations in connection with the conduct of war; that the acts of the defendants, as hereinafter set forth, following the time the strike became effective, have interferred with and now interfere with and prevent plaintiff from continuing as such common

carrier in the transportation of such articles.

(25) Plaintiff further shows to the Court that as the owner of said railroad and operator of such system of transportation, as hereinabove stated, it is included in the classification of "war utilities" as defined in Section 101 of Title 50 of the United States Code as amended November 30, 1940; and that the material and freight so transported by plaintiff prior to the calling of said strike included the articles hereinabove mentioned; and that plaintiff by reason of the unlawful and unauthorized acts of the defendants has been prevented and is now being prevented from the transportation of such articles in interstate commerce and in violation of the provisions of the Constitution and Laws of the United States.

(26) Plaintiff shows to the Court that it verily believes, on information received by it which it believes to be reliable, that the defendants have been acting and are now acting, cooperating, confederating, combining and conspiring and arranging with each other to interfere with, hinder, obstruct and stop the business of plaintiff, its agents,

servants and employees in the conduct and operation 8 of its business of a common carrier in the transporta-

tion of interstate commerce; that by reason of the threats, intimidations, force, and violence of the representatives of said Brotherhoods, officers and members, many of the former employees of Plaintiff have been compelled to leave their place of employment and have been prevented from returning to their employment because of the fear of bodily harm and injury; that persons desiring

to enter the employ of the plaintiff and work in the transportation of interstate commerce have been and are being prevented from entering in such employment and work by reason of the unlawful acts of the defendants or someone or more of them, and by reasons of the threats, intimidations, force and violence of the members or representatives of said Brotherhoods and former employes of this plaintiff now on strike.

(27) Plaintiff further shows to the Court that said striking employees, notwithstanding the fact that they have ceased their employment and have refused to return to their work after having been notified by plaintiff to return to work, have, in many instances, come upon the premises of the plaintiff, on roadways leading to said premises and in the vicinity of said premises in great numbers and by their threats, abusive language, intimidations, threats and show of violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason of their fear of violence; and have prevented other persons desiring to enter the employ of the plaintiff from doing so by their threats of violence, abusive language and intimidations.

• (28) That said striking employees and others acting with, cooperating, confederating, combining and

conspiring with each other and, in many instances, congregated in the vicinity of the plaintiff's property at various entrances thereto and have established the practice commonly known as picketing; that is, assembling or causing to be assembled numbers of men in sympathy with said strike at various points of ingress and egress to the freight house, yards, roundhouses, and other premises of the plaintiff or in proximity with plaintiff's property where . its present employes are required to work; and that said pickets, in many instances, are armed with clubs and other implements and that said pickets so armed with clubs are stopping persons desiring to enter upon plaintiff's premises and desiring to transact business with the plaintiff and, in some instances, officers of the plaintiff have been stopped by said pickets, some of whom were armed with clubs and other implements displayed in a violent and threatening manner; and that by threats of danger and threats of violence of many kinds and by abusive language are seeking to prevent and, in many instances, are preventing employees of plaintiff from continuing their work or other persons from becoming employees of plaintiff:

(29) Plaintiff further shows to the Court that by reason of the threats, intimidations, abusive language, acts of violence and threats of violence by said strike employees or someone or more of them who are confederating and conspiring with them, that the employees of plaintiff by reason of their fear of violence to themselves and to their families or property have been and are being prevented from working for the plaintiff; that by reason of the acts of the defendants or someone or more of them cooperating. confederating, combining, conspiring and arranging with each other and with their sympathizers to interfere with, hinder, obstruct and stop the business of the plaintiff, the plaintiff has been and is now hindered and obstructed from the prosecution of its business as a common carrier of interstate commerce, and in the proper care and protection of its business as a common carrier in interstate

20 commerce; that plaintiff has been and is now prevented from properly caring for and rendering service to the various patrons of its road and in the prosecution of its business as a common carrier in interstate commerce by reason of the unlawful and unauthorized acts of the de-

fendants or some of them.

(30) Plaintiff further shows to the Court that in many instances the employees of the plaintiff have been stopped by said striking employees of plaintiff or some of them while on their way to or from work, and have been threatened with bodrly injury to themselves, their families, or injury to their property, if they do not cease their employ by the plaintiff; that said employees have been subjected to profane, scurrilous and vulgar attacks by the language of said striking employees; and that many of the pickets at the entrance of the plaintiff's property are armed with clubs and other implements of violence which have been displayed by many of said pickets in a threatening and illegal manner.

(31) Upon information and belief which information plaintiff believes to be true, plaintiff shows to the Court that many of its employees have been called by telephone by persons in sympathy with said striking employees, or by striking employees, and have been warned not to return to work for the plaintiff under threat of bodily violence to themselves or their families; that in some instances the wives of employees have been called by telephone and threats of injury made to themselves or said employees in

case said employees should not cease their employment

with plaintiff.

(32) Plaintiff further represents and shows to the Court that by reason of the acts of said striking employees and those cooperating and confederating with them as aforesaid, it has been and is prevented from properly carrying on its business as a common carrier in interstate commerce, and that it fears immediate and irreparable injury, loss or damage will result to it by reason of said striking employees and other persons affiliated, acting, combining.

21 agreeing or arranging with them by reason of threats of violence and acts of violence, unless said striking employees and those affiliated, acting or combining or conspiring with them are enjoined by this Honorable Court from the continuance of such unlawful acts, threats and

conspiracies.

(33) Plaintiff further shows to the Court that its train service in the handling of interstate commerce has been interfered with and prevented by reason of the unlawful acts of the defendants and their acts of violence and threats of violence, and the plaintiff verily believes that there is imminent and immediate danger of the train service of plaintiff being interfered with, interrupted and delayed, and of further interruption, interference and delay with interstate commerce: that in order to continue the uninterrupted passage of trains carrying interstate commerce that it is necessary for the plaintiff to have the necessary employees to handle said trains, such as engineers, firemen, conductors, brakemen, switchmen and helpers, and that it fears said service in interstate commerce will be further interrupted and stopped unless said strike employees and. those affiliated, acting, combining and conspiring with them shall be enjoined from interfering with the work and service of plaintiff and employees desiring to work, or those desiring to enter in plaintiff's employ.

22 (34) Plaintiff further shows upon information and belief, which it believes to be true, that upon the calling of said strike by said brotherhoods and its representatives as hereinbefore set forth, the representatives of said brotherhoods announced that they would establish picket lines at the points of entrance to the property of the plaintiff and would use all means necessary to prevent the operation of plaintiff's road; that following the calling of said strike and the announcement of the intention of said brotherhoods and those combining, confederating and co-

operating with them, picket lines were established and have since been maintained at the various entrances to the property of plaintiff; that at the entrance leading to the shops and offices of plaintiff leading from the public highway known as U. S. Route 24, in East Peoria, picket lines have been established and are now maintained; that from fifteen to twenty men, striking employees and others cooperating and confederating with them, have been stationed at said point and that many of the said men have been armed and are armed with clubs and other instruments of violence; that said striking employees in said picket line and those confederating and conspiring with them at said point have stopped various persons desiring to enter the said lane or to leave said lane in going from the premises. of the plaintiff, and that various acts of violence have occurred at said point, and that various persons entering or leaving said premises have been stopped and threatened with violence if they do not cease working for the plaintiff; that officers of plaintiff have been stopped at said point by said striking employees.

(35) Plaintiff further shows that on the night of December 30, 1941, one Zeno F. Merrill, an employee of plaintiff who has continued to work as an engineer for plaintiff, had completed his work for the day at about five-thirty p. m. and was leaving the premises of the plaintiff for the purpose of returning to his home, in company with one Herschel Thompson; that the said Merrill was in the

rear seat of the automobile being driven by the said 23 Herschel Thompson and that when the automobile reached the end of the lane leading to the hard road, U. S. Route 24, the striking employees and pickets interfered with the passage of said car and as a result thereof said car was stopped; that after said car was stopped various members of the picket force came to the car in which the said Merrill was riding and forced him to get out of the car and thereupon assaulted the said Merrill, severely injuring him; that he was taken out of said car and beaten by defendants W. E. Causey, Walter McMullen, Walter Kohtz, H. O. Todd, Carl Roskamp, and C. L. Brown.

Plaintiff attaches hereto and makes a part of this complaint the sworn statement of said Zeno F. Merrill with reference to said assault, the same being marked as Plain

tiff's Exhibit "C".

(36) Plaintiff further shows to the court that at the entrance to the freight house of plaintiff leading from West

Washington Street in the City of East Peoria, a picket line was established upon the calling of said strike, by said defendants or some one or more of them, for the purpose of preventing ingress and egress to and from said freight house; that some of said pickets were armed with clubs or other implements of violence, which said clubs and other implements were used in a threatening manner to prevent ingress and egress to and from said freight house; that at times as many as eight to ten pickets were located at the entrance to said freight house, and that pickets have been stationed at said point continuously from the time of the calling of said strike until the evening of Wednesday, December 31, 1941.

(37) Plaintiff further shows to the Court that said defendants or some of them or those cooperating and confederating with them, have been stationed as pickets near what is known as the Lake Eric crossing of the T. P. & W. Railroad and the Nicket Plate Railroad in East Peoria, and at various other points along the line of railroad of plaintiff, and that said pickets have by acts of violence and

threats of violence attempted to prevent the passage of trains operated by plaintiff in handling interstate commerce.

(38) Plaintiff further shows to the court that the following acts of violence on the part of said defendants or some one or more of them or other persons confederating and cooperating with them and acting as pickets to prevent

the operation of plaintiff's railroad:

(a) That on December 29, 1941, the O'Neill Transfer & Storage Co. attempted to send one of its trucks to the freight house of plaintiff in East Peoria for the purpose of receiving or delivering freight to plaintiff; that the driver of said truck was stopped at the entrance of the lane leading to the freight house and turned back by the pickets then stationed at said entrance, and the driver of said truck was refused permission to enter said driveway and to go to the freight house of plaintiff. That on said December 29, 1941 a truck of the Haley Transfer Company was also refused permission to enter said driveway leading to the freight house of plaintiff in East Peoria, and was prevented by the acts of the defendants or some one or more of them or by persons cooperating and confederating with them from reaching the freight house of the plaintiff.

(b) That on December 29, 1941, Don McClaskey, a driver for the Transit Icing Company, which plant is lo-

cated upon the premises of plaintiff, was refused permission to enter said ice plant by said pickets and turned back

upon three different occasions.

(c) That on December-29, 1931, the shop truck of plaintiff was attempting to enter this driveway leading from Washington Street in East Peoria to plaintiff's freight house for the purpose of delivering or receiving materials necessary for the operation of plaintiff's railroad, and that said truck was turned back and refused admittance to the entrance to said freight house.

That on December 29, 1941, the foreman of the International Harvester Company was refused admission to 25 the entrance to the freight house of plaintiff in East

Peoria by said strikers and those forming the picket line at the entrance to said freight house.

(d) That on December 29, 1941, one James Lantz, a fireman in the employ of plaintiff, approached the entrance to the lane leading to plaintiff's property from U. S. Route 24, for the purpose of going to work; that the car driven by the said James Lantz was stopped by said pickets, and said pickets threatened to overturn his car, the said pickets threatening violence and injury to the said James Lantz; that the car of the said James Lantz was almost overturned by said pickets, but notwithstanding that fact the said James Lantz proceeded on to his work as fireman for plaintiff.

(e) That on December 29, 1941, the Peoria & Pekin Union Railway Company attempted to make delivery of a cut of cars from its yards in East Peoria to the tracks of plaintiff; that some of the pickets and striking employees of plaintiff or those cooperating with them, stopped said cut of cars so being operated by the Peoria & Pekin Union Railway Company in the vicinity of Herschel Street and refused permission for said cut of cars to continue, and that as a result of the acts of said pickets and striking employees, the Peoria & Pekin Union Railway Company employees returned said cut of cars to the Peoria & Pekin Union Railway Company syards, and no delivery was

(f) That on December 29, 1941, Chief Engineer W. Y. Ware and Signal Supervisor Hultgren, employees of plaintiff, while driving over the lane leading from the plaintiff's yards to U. S. Route 24, observed that there were tacks and other articles which could cause a puncture to automobile

made of said cut of cars by reason of the acts of the pickets

and striking employees.

tires strewn over a portion of said lane; that said employees continued to U.S. Route 24 where the pickets were assembled and there examined the tires of their automobile but did not find any tacks in the tires of their automo-

bile; that they continued to the west end of plaintiff's East Peoria yards a distance of about three-quarters of a mile, and then returned to the lane leading to plaintiff's yards; that they observed that roofing pails had been thrown upon said driveway and that it was necessary to sweep said nails from said driveway before attempting to pass over the same to the yards of plaintiff. Plaintiff verily believes that said roofing nails and other instruments which could cause a puncture to automobile tires had been. thrown upon said lane by some one or more of the pickets.

stationed at the entrance to said lane at its juncture with U. S. Route 24. Plaintiff further avers upon information and belief, which information it believes to be true, that one of the employees of plaintiff observed some one or more of the pickets throwing nails and tacks upon said driveway on December 30, 1941.

That on December 30, 1941, the L. C. L. truck of plaintiff which carries L. C. L. freight between Peoria; Illinois, and Effner, some of which L. C. L. freight constituted interstate commerce, was stopped as it left the lane leading from the freight house of plaintiff in East Peoria, and the driver was informed that he would not be permitted to reenter the lane leading to the freight house of plaintiff upon his return trip, and said driver was threatened that if he continued to drive said truck, bodily injury to him would result.

That on December 30, 1941, the Chief Special (h) Agent, Kipling, was stopped at the entrance to the lane leading to the yards of plaintiff as he was on his way to work, and was threatened by one or more of the pickets that if he would get out of the ear he would be struck over the head with a lantern; that the said Kipling got out of his car but that no injury occurred to him and he was permitted to continue on to his work.

Plaintiff is informed and believes and upon such information states that on the morning of December 30,

1941, the wife of Zeno F. Merrill was called by telephone at her home and advised that her husband had been seriously injured and was in the Proctor Hospital; that said telephone call to the wife of said Merrill was long prior to the time of his injury on the evening of December 30, 1941; and plaintiff verily believes that said telephone call was made by some one or more of the striking employees or those confederating or cooperating with them, for the purpose of influencing said Mrs. Merrill to have

her husband cease working for plaintiff.

(j) Plaintiff further shows to the Court that on December 29, 1941, the high rail on a curve in the plaintiff's track on New Philadelphia hill, in the County of McDonough, was found to have been greased, and that when the engine and train of plaintiff struck said greased rail the engine and train were caused to slip and slide, but that fortunately it did not become derailed; that the greasing of said high rail of said curve was likely to cause a derailment of any train passing over the same. Plaintiff shows to the Court that it verily believes that the greasing of said rail was the act and deed of some one or more of the strikers or those cooperating and confederating with them.

(k) That on December 30, 1941, a truck of the Cohen Furniture Company, of Peoria, seeking to deliver goods to the yard of plaintiff, was turned back by the pickets at the entrance to the lane leading from Route U. S. 24; that on said date a truck of the Illinois Bell Telephone Company was driven into said lane leading to the yards of plaintiff, and workmen of said Telephone Company were proceeding to set a telephone pole upon the property of plaintiff for the purpose of installing additional telephone service for plaintiff; that the pickets at the entrance to said lane caused the employees of the Telephone Company to cease work there and to refuse to continue the work of installing said telephone pole and additional telephone service for

plaintiff.

(1) That on December 30, 1941, and subsequent thereto, plaintiff has discovered switches unlocked and lamps

28 broken at Sheldon, Webster, Leonard, Forrest, La-Hogue and Chatsworth, such switches having been turned so as to cause a train to leave the main track, and by reason of the signals having been destroyed or removed, the operators of said trains would be unable to discover or ascertain that such switches had been thrown; that plaintiff, through its section men or patrolmen, discovered the throwing of said switches and destruction of signals prior to the arrival of any trains which contained interstate commerce; that the said switches at Forrest and LaHogue were left partially open so that a train operating over the same would have been derailed. (m) That on December 30, 1941, a train of the plaintiff passing over the Nickel Plate crossing, returning to East Peoria yard of plaintiff, was stoned by various pickets or those cooperating and confederating with them; that on the same date a train of the plaintiff moving in a westerly direction was stoned near the west end of the Illinois River bridge, resulting in damage to the equipment of plaintiff.

(a) That on December 31, 1941, the truck of the Railway Express Agency which was going to the East Peoria sheps for the purpose of delivering express to the East Peoria yards of plaintiff, was stopped by the pickets at the entrance to the lane leading to the yards of plaintiff, and by reason of the acts of said defendants the driver of said truck refused to go through the picket lines. That also on December 31, 1941, a truck which was going to the yards of plaintiff for the purpose of delivering gasoline for motor ears was stopped by said pickets and turned back. That on said date, round house employee Harrison, who was on his way to the yards of plaintiff, had the windows of his car broken as he passed the picket line at the entrance to the lane leading from U. S. Route 24.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near mile post 4-26 near Webster, Illinois, was cut and the ends wrapped around two other wires,

thereby preventing the proper operation of the tele-29 graph system of plaintiff in the operation of its railroad. Plaintiff verily believes that the cutting of its telegraph wire was the result of the acts of said striking employees or those associating and confederating with them.

That on the afternoon of December 31, 1941, at (p) about two-thirty o'clock, when one of the trains of plaintiff was proceeding westwardly from Peoria, hauling interstate and other freight, said train was attacked near Hollis, Illinois, by W. L. Brown, G. F. Brown, J. J. Grimming, G. Underwood, H. Reiman, W. J. Christoff, J. L. Fueger and H. J Dilley, who threw stones and other missiles against said train, breaking all of the glass and window frames from the caboose of said train, and also breaking the glass headlight of the engine. Employee Carnarious had his lip cut, and employee Ward was struck in the stomach which knocked the wind out of him; that said striking employees above named used tocks, brickbats and other articles which they threw against the train; that said striking employees continued to follow said train

from Hollis, Illinois, to Canton, Illinois, attacking said train at various points along the route, resulting in further damage to the engine and caboose; that the employees of plaintiff in charge of said train picked up various rocks and brick-bats which had been thrown by said striking employees and the same are now in the possession of the plaintiff, ready to be produced in Court; that one or two of said stones and brick-bats have blood upon them as a result of their striking employees of the plaintiff. That Milwaukee Car No. 708205; contained in said train, covered by way-bill 14965, shipped December 24, 1941, contained a load of salt from the Morton Salt Company, Manistee, Michigan, consigned to the Farmers Cooperative Grain & Supply Company, at Canton, Illinois: that said train also contained Illinois Central Car No. 10138, way bill No. 20002; shipped December 26, 1941, containing feed, from the-Raven Sales Company, Council Bluffs, Iowa, to Glenn Lovell, Bushnell, Illinois, routed Illinois Central to Peoria and T. P. & W. west; that both of said cars con-

30 tained shipments moving in interstate commerce, and that the movement of said cars containing said interstate commerce was interfered with and delayed by reason of the wrongful, unlawful and unauthorized acts of said

defendants hereinabove named.

- (q) That on December 31, 1941, knuckles and pins were removed from ears on plaintiff's road at Chatsworth and at LaHogue; that on said date pins had been taken from both ends of a grain car located at the elevator at LaHogue; that knuckles and pins, were also emoved from cars on plaintiff's road at Crescent City; that on said date lenses in the switch lamps at the east end of Track Five at Leonard were broken; that on said date the headight of Engine 43 was broken with a brick-bat at Hamilton. Illingis; that on said date the switch light at the east end of Track Three at Chatsworth was broken. Plaintiff verily believes that the foregoing acts set forth in this paragraph were committed by some one or more of the striking employees or by those confederating and cooperating with them.
- (r) .That on December 31, 1941, a switch engine of the plaintiff on its way from East Peoria to Peoria was stopped at the east end of the Illinois River bridge in the City of East Peoria, and said engine and crew were attacked with brick-bats and stones; that the headlight and windows of said engine were broken; that immediately following the

stoning and damaging of said engine, a number of the striking employees were observed congregated in the vicinity of said incident; that said cut of car being handled by said switch engine contained three cars which contained shipments of merchandise moving in interstate commerce; that as a result of the attack upon said switch engine the movement of said cars was delayed some twenty-five minutes; that said interstate cars in said cut at said time were P. R. R. car 567738, way-bill 50053, dated December 27, 1941; P. R. R. car 518602, way-bill 50052, dated December 27, 1941; and P. R. R. car 50404, way-bill 50054, dated December 27, 1941, all of said cars containing bottles consigned by the Ball Bros. Co. of Muncie, Indiana, to

Hiram Walker, Inc., Peoria, Illinois, routed P. R. R. to Effner, and T. P. & W. to Peoria; That each of said cars in this paragraph mentioned was offered by the plaintiff to the Rock Island Railroad for the purpose of transfer and delivery to Hiram Walker, Inc.; that by reason of the acts of violence and threats of violence on the part of the defendants and those cooperating and conspiring with them, the employees of the Rock Island Railroad, as the plaintiff is informed and believes, fear personal injury if they attempt to take possession of said cars and make delivery thereof, and that by reason thereof said cars have been standing on the interchange track in Peoria since December 31, 1941; that all of said cars have been delayed in their transportation of interstate commerce.

(s) That on December 31, 1941, one of the officers of plaintiff saw a car bearing license plates No. 6 32-609—Illinois—1941, drive up alongside of a T. P. & W. engine; that a woman leaned out of said car and shook a brake club as said engine was near the Illinois River Bridge in East Peoria, Illinois; that said car having license No. 6 32-609—Illinois—1941 is registered as belonging to J. I. Mack, a striking fireman of plaintiff, and was driven by said Mack.

(39) Plaintiff further shows that on December 29, 1941, at about 12:45 P. M., the general storekeeper of plaintiff at the East Peoria yard left said yard in East Peoria and took an open stake-body truck belonging to plaintiff and drove to the Illinois Furniture Company, in Peoria, forthe purpose of picking up some mattresses which had been ordered by the plaintiff; that said employee then proceeded to the East Peoria freight house located just off of West Washington Street, in East Peoria, where he was to pick up some freight which had been consigned to the

store department at the yard; that when he arrived at the entrance to the freight house at about two o'clock P. M. he was stopped by some nine men, a few of whom were brandishing clubs; that of said nine men said employee recognized O. W. Kirk, C. H. Kirk, Clinton Stetler, John J. Gimming, and K. A. Feldt; that the said O. W. Kirk and John J. Gimming were holding clubs over their

shoulders; that said men were blocking the road leading to the freight house and caused said truck to stop: that Clinton Stetler came up to the door of the truck and asked the driver where he was going, and when the driver stated that he was going to the freight house he was asked if he had material that was to be delivered to the freight house; that said employee informed the said Stetler that he had nothing to deliver but that he was going to pick up material that was consigned to the store departmentat the yard; that the said Stetler then talked to the rest of the men and came back and said that they would not permit the driver of the truck to proceed; that the supplies that said employee expected to pick up were shipments of interstate freight, consisting of three separate shipments. as follows: (1) six bundles rough castings, received from Johnstown, Pennsylvania, way-bill 797, dafed December 23, 1941, shipped by Davis Brake Beam Company via Pennsylvania Railroad to Effner, and T. P. & W. to Peoria; (2) Six fibre boxes Packing Device Forms N O I B N Bronze, received at Boston, Massachusetts, way-bill 8059. dated December 16, 1941, shipped by Hunt Spiller Manufacturing Company, via New York Central Railroad. Wabash Railroad and T. P. & W.; (3) three bundles welding wire, received Davenport, Iowa, way-bill 5535, dated December 21, 1941, shipped by Air Reduction Sales Company via C. B. & Q. and T. P. & W.; that all of said shipments were shipments received in interstate commerce intended for the use of the plaintiff in the conduct of its business as a carrier of interstate commerce; and that the delivery of said shipments to plaintiff at its East Peoria yards was prevented by the action of said striking emplovees as aforesaid.

39½. Plaintiff further shows to the Court that on January 2, 1942, at about 7:45 A. M., its employees operated an extra freight train, with locomotive, tender, and approximately twenty-five to thirty cars of freight and caboose, which they intended to operate from the yards to the plaintiff in East Peoria, Tazewell County, Illinois, in

a westerly direction to Keokuk, Iowa; that when said train reached a point in the City of Peoria commonly known as Hiram Walker crossing, at Edmund Street, two of the defendants herein named, to-wit, John J. Grimming and Arthur Brewster, were riding in an automobile which was being driven by said John J. Grimming; that the driver stopped said automobile near the train and in the presence of Harold E. Kipling, Chief Special Agent of plaintiff, the said John J. Grimming then and there said in a threatening manner to Harold E. Kipling the following: "You are not coming back off of the west end today; we are going to get all of the rest of them, too; none of them are coming back; they might go out, but they are not coming back; we have the stuff to get you with, too."

That after the said defendant John J. Grimming, in the presence of Arthur Brewster had concluded making said threatening statement as aforesaid, the said John J. Grimming and Arthur Brewster proceeded in a westerly direction on the public highway, parallel with the said railroad, until they reached a point near the plant of the Allied Mills, south of the Village of Bartonville in the County of Peoria, and there joined with a large number of other individuals, some of whom are defendants herein named; that said individuals were there gathered at or near the right-of-way of the plaintiff, being in the approximate number, of twenty-five or thirty, and were armed with clubs, stones and other missiles, and with glass whiskey bottles filled with gasoline or benzine;

That among the persons gathered at the point aforesaid were two of the defendants, namely Frank W. Lucas and Leo Totten, who were former employees of the plaintiff; that when said locomotive drawing said freight train reached a point near where said men had gathered, the said Frank W. Lucas then and there threw a glass whiskey bottle containing gasoline or benzine into the cab of the engine, with the intention then and there to injure the engineer or fireman or other persons riding in the cab of said engine or with the intention of destroying or in-

juring the said locomotive; that at the same time one 34 of the other individuals in said group of men congregated as aforesaid, and with like intent, also threw a glass whiskey bottle filled with gasoline or benzine into the cab of said engine; that as a result of the throwing of said bottles into the said cab, the said gasoline or benzine became ignited and flames enveloped the interior of the

cab, and burned a portion of said cab, and injured the engineer who was then and there operating the said locomotive, and other employees of the plaintiff riding in said locomotive were also burned and injured as a result of said fire.

That immediately thereafter the said Frank W. Lucas who threw one of the said whiskey bottles into said cab, ran to an automobile which was then standing nearby with the engine running, headed in the direction of the City of Peoria, easterly, and in the possession of Leo Totten; said Lucas hurriedly got into said automobile, and the same was then driven rapidly by the said Leo Totten in the direction of the City of Peoria; that the said Frank W. Lucas and Leo Totten were later apprehended and arrested by the police officers of the City of Peoria.

That the facts and circumstances with reference to the attempt of Frank W. Lucas and Leo Totten to injure the employees of the plaintiff or to destroy its railroad property, are set out in more detail in the affidavit of Harold E. Kipling hereto attached and made a part hereof, and

. marked Exhibit "D."

35 (40) That the acts of the defendants, and those cooperating, confederating and conspiring with them, for the purpose of preventing plaintiff from continuing in the performance of its duty as a common carrier of interstate and foreign commerce are wrongful and unlawful and in violation of the laws of the United States relating to the transportation of freight in interstate and foreign commerce.

That heretofore on towit, the 30th day of December, 1941, plaintiff caused to be served upon the Mayor and Chief of Police of the City of East Peoria, and upon the Sheriff of the County of Tazewell and State of Illinois notice of said strike, and that the picket lines established by said strikers and those cooperating, confederating and conspiring with them had prevented and interfered with the entrance of trucks of Haley Transfer Company and O'Neil Transfer and Storage Company in reaching the freight house of the plaintiff, and that said pickets had further prevented and interfered with the various entrances. of individuals upon plaintiff's property for the purpose of delivering and receiving merchandise at the freight house, and calling upon said law enforcing officers to take all necessary steps to protect the plaintiff and the shipping public against any interference with the free movement

of any person or persons to the freight house in East-Peoria, whether by the picket line then established at the entrance of said freight house, or otherwise, and requested that such officers of the law as might be needed should be stationed at West Washington Street entrance of said freight house to preserve order and take such other steps as might be necessary to accomplish that result and to prevent possible violence; that subsequent to said notice, plaintiff has called upon the sheriff of the County of Tazewell and State of Illinois, to furnish protection to its men who desire to work, and for the protection of its employees from acts of violence and intimidation on the part of the

defendants, or others cooperating, confederating and conspiring with them, for the purpose of preventing

the operation of plaintiff's railroad. That on the 2nd day of January, 1942, plaintiff requested by wire the sheriffs of the counties of Iroquois, Ford, Livingston, MacLean, Woodford, Fulton, McDonough, Hancock, Henderson, Tazewell and Peoria as well as the mayors of the various cities located in said counties for protection to plaintiff and its employees, and that request has also been made upon the sheriff of the county of Peoria and the state high-

way police for such protection.

That notwithstanding such request upon such law enforcing officers, the defendants cooperating and confederating and conspiring together with others are seeking by acts of violence and threats of acts of violence, intimidation and coercion to prevent the employees of the plaintiff who desire to return to work from returning to work, and to prevent others who are willing to work for the plaintiff and many of the employees and others from returning to work; that said law enforcing officers, either through their inability to prevent violence or their unwillingness to preserve law and order, have failed and are now failing to prevent disorder, violence and threats of violence by the defendants and those cooperating, confederating and conspiring with them against the plaintiff's employees and those desiring to work for plaintiff; and upon information and belief, which information plaintiff believes to be true, plaintiff alleges and charges that the said law enforcing officers of the various counties through which plaintiff's line of railroad runs are unable to prevent the acts of violence and threats of violence, intimidation and coercion. on the part of the defendants and those cooperating, confederating and conspiring with them, as hereinabove and

hereinafter stated; that by reason of insufficient force of law enforcing officers in the various counties and cities that said law enforcing officers are unable to prevent violence and unlawful acts of violence on the part of the defendants and those cooperating, confederating and conspiring with them.

Plaintiff shows to the court that since the calling of said strike it has employed various men to take the place of the strikers, who have refused to return to work, and that it is attempting to operate its railroad, notwithstanding the acts of violence and threats of violence on the part of the defendants and those cooperating, confederating and conspiring with them; that it has received application from many persons seeking employment, and that it desires to employ and put to work such additional employes as may be necessary to operate its railroad, and to fully comply with all of the requirements of shippers in both state and interstate commerce, and to prevent delay in the handling of state and interstate commerce: that by reason of the unlawful acts of the defendants and those cooperating, confederating and conspiring with them, plaintiff is unable to fully operate its road and handle without delay such state and interstate traffic; that it is necessary that its employees and those operating trains of the plaintiff receive full and complete protection in the performance of their duties as employees of the plaintiff in the handling of the state and interstate traffic.

(43) This complaint is of a civil nature and involves damages to plaintiff and its employees in an amount in excess of Three Thousand Dollars (\$3000.00) over and

above interest and costs.

(44) That the complaint of plaintiff is based upon the Constitution and Laws of the United States, and that the jurisdiction of this Court is invoked on behalf of plaintiff because of the rights given it by the Constitution and the Laws of the United States.

(45) Plaintiff alleges that the unlawful acts of the defendants as hereinbefore stated have been threatened and will be committed unless restrained by this Honorable

Court.

(46) That substantial and irreparable injury to plaintiff's property has been committed and will be committed unless restrained by this Honorable Court; that to each item of relief hereinafter prayed greater injury will be inflicted upon plaintiff by the denial of relief

than will be inflicted upon defendants by the granting of relief; that plaintiff has no adequate remedy at law.

(47) That the public officers charged with the duty to protect plaintiff's property are unable or unwilling to fur-

nish adequate protection.

(48) Plaintiff shows to the Court that unless a temporary restraining order shall be issued without notice, that a substantial and irreparable injury to plaintiff's property will be unavoidable; and plaintiff prays that such temporary restraining order shall be issued for the protection of the lives of its employees and for the protection of its property.

Wherefore, Plaintiff prays that:

(A) Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge No. 926, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, J. L. Feuger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, who are named defendants herein, may be required to answer this-complaint.

(B) That a summons may be issued for said defendants, and each of them, requiring them to appear and answer this complaint within the time required by law.

(C) That said defendants and each of them, pending the hearing on this complaint, may be enjoined and restrained from:

(1) Assaulting or attempting to injure by violence, or otherwise, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the plaintiff.

(2) Intimidating or attempting to intimidate, by 39 force or violence or personal assault upon employees or officers of the plaintiff, in order to keep them from returning to work and continuing their work with the plaintiff, or to prevent others desiring to enter the employ of the plaintiff from doing so.

(3) Congregating on picket lines in numbers in excess of the number fixed by the order of the Court in the vicinity of the premises of the plaintiff, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those designing to work for the plaintiff, from entering or reaching the premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff in the operation of its railroad or the receiving, transportation or delivery of interstate freight consigned to it, or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the opera-

tion of plaintiff's railroad.

(5) Cooperating, confederating and conspiring for the purpose of in any way interfering with the plaintiff in the handling of war and national defense material, including arms, armament ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof intended for use of the United States in connection with the national defense, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from interfering with the handling of any and all material on its trains consigned or moving in interstate commerce.

40 (6) Congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent by threats or intimidation or violence, or threats of violence to any person engaged in or remaining in the

employ of the plaintiff.

(7) Singly or in combination, or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force, or intimidation, or by the use of profane, insulting or abusive language, or by force and violence or threat of violence to any person being employed by the plaintiff, or engaged in or remaining in the employment of the plaintiff, or in performing any business, labor or duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plaintiff, or about to enter the employ of the plaintiff, not to

remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage of any person toward, to, upon, or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate com-

merce.

41 (11) By violence or threat of violence, molesting or threatening any member of the family of any employee or officer or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family or any such employee or officer.

(12) Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with the intention of committing any act of violence upon any employee or officer of the plaintiff or any one desiring to

enter the employ of the plaintiff.

(13) Firing any shot or missile, rock or stone or club at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and enjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.

(14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence or threat or violence seeking to prevent employees of the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or attempting to damage or injure any of the property of the

plaintiff used in the transportation of Interstate Commerce, including any other property of the plaintiff.

42 (16) From destroying for attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or otherwise interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in the transportation of freight in interstate commerce.

or attempting to damage or destroy, any portion of the roadway, ballast, tie and tract structure, bridge, culvert, building, signal, telegraph line, locomotive, car, or any other building, structure, piece of machinery or equipment

used by plaintiff in its, business.

(18) That plaintiff may be granted a temporary restraining order against the defendants pending the hearing upon its application for a temporary injunction at

such time as may be fixed by the Court.

(19) That plaintiff may be granted a temporary injunction enjoining the defendants as hereinabove prayed pending the final hearing upon this complaint, and that upon final hearing a permanent injunction may be granted the plaintiff as against the defendants restraining the said defendants and each of them from acts as hereinabove prayed.

(20) That plaintiff may have such and other general

relief as equity may require.

Toledo, Peoria & Western Railroad, By /s/ Geo. P. McNear, Jr.,

Its President.

/s/ John M. Elliott,
John M. Elliott,
1401 Alliance Life Building,
Peoria, Illinois,
and
/s/ Clarence W. Heyl,

Clarence W. Heyl, Central National Bank Building, Peoria, Illinois, Attorneys for plaintiff. 43 IN THE DISTRICT COURT OF THE UNITED STATES.

* (Caption)

State of Illinois, State of Peoria.

Geo. P. McNear, Jr., being first duly sworn upon oath, deposes and says that he is President of Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause, that he has read the above and foregoing complaint and knows the contents thereof; that the matters and things therein set forth are true as he verily believes, except insofar as they are stated to be upon information and belief, and that as to such matters he verily believes them to be true based upon the information furnished him.

Affiant further says that he verily believes that if a temporary restraining order is not issued in this case without notice to the defendants, that bodily injury and possibly death may result to the employes of the plaintiff in their attempt to conduct work for plaintiff; and that substantial and irreparable injury and damege to plaintiff's property will be unavoidable if notice is given to the defendants of application for a temporary restraining order prior to the issuance of a temporary restraining order.

(S) Geo. P. McNear, Jr.

Subscribed and sworn to before me this 3rd day of January, A. D. 1942.

(S) Esther M. Schulthers, Notary Public.

. (Seal)

EXHIBIT "A."

National Mediation Board Washington

David J. Lewis, Chairman George A. Cook Otto S. Beyer

November 21, 1941

Robert F. Cole, Secretary

Case A-903

Mr. H. H. Best, Supt.,
Toledo, Peoria and Western Railroad,
Unión Station, Peoria, Ill.
Mr. F. W. Coyle, Vice Pres.,
Brotherhood of Railroad Trainmen,
Congress Hotel, Chicago, Ill.
Gentlemen:

We have been advised by Mr. H. H. Best, Supt., Toledo, Peoria and Western Railroad, and Mr. F. W. Coyle, Vice Pres., Brotherhood of Railroad Trainmen, in answer to our letter addressed to you jointly under date of November 7, 1941, that the carrier and the organization have declined, in writing, to arbitrate the question in case our file A-903, as set forth in our letter of November 7.

Your attention is therefore directed to the last clause in Section 5, First (b), of the Railway Labor Act, as amended,

reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section-5, Third, and in Section 10 of the Law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Mr. Coyle copy of letter from Mr. Best dated November 47, 1941, and to Mr. Best copy of letter from Mr. Coyle dated November 8.

By direction of the National Mediation Board.

(S) Robt. S. Cole; Secretary,

CC: Mr. A. F. Whitney, Pres., Brotherhood of Railroad Trainmen.

46 Mediation Case No. A-903

Jefferson Hotel Peoria, Illinois November 8, 1941

Mr. Robert F. Cole, Secretary National Mediation Board Washington, D. C.

Dear Sir :

Please refer to "Arbitration Offer" proposed by Mediator Murray in his letter of November 7, 1941, addressed to Mr. H. H. Best and the undersigned, in connection with Mediation Case No. A-903, involving proposed revision of agreement covering rates of pay, rules and working conditions desired by the Management and counter proposed schedule submitted by the Brotherhood of Railroad Trainmen, General Committee, as applying to conductors, brakemen, yardmen and switchtenders employed on the Toledo, Peoria and Western Railroad.

Proposal to arbitrate the above mentioned controversy, and, statements advanced by Mediator Murray as to why all interested parties should agree to arbitration, have been very thoroughly considered and wish to advise we are respectfully declining to submit the dispute in question to

arbitration.

Please address any further communications you might have for me to the Congress Hotel, Chicago, Illinois.

Yours very truly,

(S) F. W. Covle, F. W. Covle,

Vice President—B: of R. T.

Cy-Mr. A. F. Whitney,

President Brotherhood of Railroad Trainmen.

47

EXHIBIT "B."

National Mediation Board

Washington

David J. Lewis, Chairman George A. Cook Otto S. Beyer

November 21, 1941.

Case No. A-904.

Robert F. Cole, Secretary-

Mr. H. H. Best, Superintendent, Toledo, Peoria & Western Railroad, Peoria, Illinois.

Mr. W. C. Keiser, Vice President, Brotherhood of Locomotive Firemen and Enginemen, Jefferson Hotel, Peoria, Illinois,

Gentlemen:

We have been advised by Mr. H. H. Best, Superintendent, Toledo, Peoria & Western Railroad, under date of November 17, 1941 and by Mr. W. C. Keiser, Vice President, Brotherhood of Locomotive Fremen and Enginemen, under date of November 8, 1941, in answer to our letter addressed to you jointly under date of November 7, 1941, that the carrier and organization have declined, in writing, to arbitrate the question in case our file A-904, as set forth in our letter of November 7, 1941.

Your attention is therefore directed to the last clause in Section 5, First (b), of the Railway Labor Act, as

amended, reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting

the dispute have been exhausted, without effecting a set-

tlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Mr. Best a copy of Mr. Keiser's
Letter dated November 8, 1941 and to Mr. Keiser a
copy of Mr. Best's letter dated November 17, 1941:

By direction of the National Mediation Board. Robt. F. Cole, (Signed)

Secretary:

CC: Mr. D. B. Robertson, President Brotherhood of Locomotive Firemen and Enginemen 318 Keith Building Cleveland, Ohio.

49

Peoria, Illinois, November 8, 1941.

Mr. Robt. F. Cole, Secretary, National Mediation Board, Washington, D. C.

Dear Sir:

This will acknowledge communication from Mediator John F. Murray, addressed to Mr. H. H. Best, Superintendent, Toledo, Peoria & Western Railroad and the undersigned on November 7, 1941, requesting that we enter into an agreement to submit the dispute involving proposed schedule covering rates of pay, rules and working conditions for engineers, firemen, helpers, hostlers and hostler helpers employed on the Toledo, Peoria & Western Railroad to arbitration as provided in Section 8 of the Railroad Labor Act.

We have given careful consideration to this request that we agree to arbitrate this dispute and this is to advise that

such request is respectfully declined.

As the Mediator has left the property and apparently severed his connection with this case, please be advised that we contemplate submitting the wage and rules question, Toledo, Peoria & Western Railroad to a strike vote of the employes represented by our Organization.

Yours very truly,

W. C. Keiser (Signed) Vice President, B. of L. F. & E.

CC-D. B. Robertson

50

Statement Of Zeno F. Merrill.

My name is Zeno F. Merrill, age 42, and I reside at R. R. 6, East Peoria, Illinois. I am employed as engineer by the T. P. & W. Railroad Company at Peoria, Illinois. I have

been employed by that Company since 1922.

On the night of December 30th, 1941, I checked off duty at the T. P. & W. roundhouse, East Peoria, Illinois, at 5:30 P. M. I had arranged to ride home in the automobile of another employee, Mr. Herschel Thompson, and he picked me up at the crew caller's office in the T. P. & W. yards. I got in the rear seat of the automobile which was a two door sedan and laid down on the floor of the car. It was dark at this time. Mr. Thompson drove out the lane leading from the T. P. & W. yards to the hard road which is Route 24. The hard road is about two blocks from the crew house. As we got to the hard road and pulled up on the hard road our car was involved in a slight collision with a truck which was going east on the hard road. Thompson stopped the car on the north shoulder across the hard road from the road leading to the T. P. & W. yard. Thompson got out of the car and walked back to the truck that he had collided with and I remained in the car on the floor. In a few moments a large group of men came over to the car and looked in through the left window which had been broken in the accident. Of this group I recognized two at this time and those two were H. O. Todd and Walter McMullin: The first statements made by these men were as follows:

"You get out of that car." . 0.

There was a large group of men pushing and shoving around the car and swearing and cursing at me and ordering me to get out of the car and making threats of violence toward me. As I did not immediately get out of the car McMullin who was standing next to the left car door pulled it open and threatened to pull me out of the car. Rather

than be pulled out of the car I told them that I would get out, which I did. I stepped out of the left door of

the car on to the shoulder on the north side of the hard road. As soon as I stepped out on the ground I was immediately surrounded by a large group of men numbering at least eight or ten. These men immediately seized me and started striking me, mauling me and beating me in a.

violent manner. At least one of the men who were beating on me had a club. The rest were striking me with their fists and kicking me. They pushed me across the hard road to the south shoulder, over a guard rail and down into a ditch on the south side of the road in a deep ditch about forty feet west of the entrance to the T. P. & W. I was on the ground and a number of private road. the men were still beating on me. Of the men who were beating me and striking me I recognized and can identify the following: W. E. Causey, Walter McMullin, Walter Koltz, H. O. Todd, Carl Roskamp and C. L. Brown. As a result of the beating and being knocked around I was semiblinded and when somebody came up and took me by the shoulder and said: "Get in that car," I got up and got into a car, it may have been the same car that I came out in, and was taken back into the T. P. & W. yards. I waited at the Master Mechanic's office until the East Peoria police came and Thompson and I followed the police car to the hard road where they picked up three of the men who had beat me up. I think those three were Causey, McMullin and Todd or Koltz. We all then went to the City Hall in East Peoria where I appeared before Police Magistrate Jess McKenzie and swore out assault and battery warrants for W. E. Causey, Walter McMullin, Walter Koltz, H. O. Todd, Carl Roskamp and C. L. Brown.

(S) Zeno F. Merrill.

State of Illinois, County of Peoria. ss.

Before me John H. Boyster, a Notary Public in and for said County appeared Zeno F. Merrill, personally known to me to be the same who acknowledged that he had read the above and foregoing statement and swore on his oath that the facts set out therein were true and correct.

(S) John H. Royster,

(Seal) Dated 12-31-41. Notary-Public.

52 EXHIBIT "D."

State of Illinois, County of Peoria.

Harold E. Kipling, being first duly sworn upon his oath deposes and says that he is of the age of 40 years, a resident of the City of East Peoria, Tazewell County, Illinois, residing at 805 Springfield Hill, East Peoria, Illinois; that he is an employee of the Toledo, Peoria and Western Railroad, as Chief Special Agent, and has been so employed for upwards of two years; that he is also the present duly appointed and qualified deputy sheriff in and

for the County of Tazewell and State of Illinois.

. Affiant further states that on Friday, January 2nd, 1942, he accompanied a freight train of the Toledo, Peoria & Western Railroad, destined for Keokuk, Iowa, from East Peoria, Illinois, by driving his automobile on the highway paralleling with the railroad tracks upon which the said train traveled; that when said train reached the Hiram Walker crossing which is located at Edmund Street in the City of Peoria, Illinois, the train was proceeding slowly. in a westerly direction and then consisted of a locometive. tender, approximately 25 or 30 freight cars and caboose. Affiant was then in his automobile at or near said crossing. An automobile pulled up and stopped near affiant's automobile, which said automobile was driven by John Gimming, formerly a switchman in the employ of the T. P. & W. Rail-Accompanying the said John Gimming in said automobile was a Mr. Brewster, formerly employed as a fireman for the T. P. & W. The said John Gimming then and there in a threatening manner made the following statement to affiant: "You are not coming back off of the west end today; we are going to get all of the rest of them too; none of them are coming back; they might go out, but they are not coming back." Affiant said, "Is that so." John Gimming further said "We have the stuff to get you with too." I then turned my car and followed the said freight-train as it proceeded westerly leaving the City of Peoria, and stopped my car at what is commonly known as the "P. T. Tower," near the M. & St. L. Crossing. said John Gimming with his passenger, the said Brewster. drove immediately up to the rear of my automobile and

stopped; at the same time another car in which there were a number of persons, drove up; I identified three of the persons in said car as being Delmar Newdigate, former switchman for the T. P. & W. Railroad, Walter McMullen, former brakeman, and George Kneisley, former brakeman and extra conductor of the said T. P. & W. Railroad. Affant was unable to clearly observe the other occupants of said automobile so as to be able to identify them. The said persons in the second car last above mentioned opened the door of their car and cursed and shook their fists at the train crew on said freight, train as it passed them in a

westerly direction.

I then turned my ocar and proceeded toward Hollis on the highway parallel with the said T. P. & W. railroad tracks. My next stop was on the highway near the Central Illinois Light Company substation on South Adams Street beyond the viaduct. 'At that time' I observed a third automobile in addition to the two above described. I was unable to identify the driver of the third car. The said John Gimming drove his automobile immediately to the rear of my automobile and stopped. The other two automobiles proceeded about 50 yards to the south of the place where my automobile was stopped. They pulled up alongside of each other and conversed, that is they had their windows open, so I suppose they were conversing. Gimming pulled from behind me and went down to where these two cars were, and it looked like they were all conversing. had their doors open. Gimming then turned his car and came up along parallel with me only he was headed in the opposite direction. He sat there and looked at me but did not say anything.

I followed with my automobile until the said train reached a point directly opposite the Allied Mills plant, where the said train stopped to set out some cars. Upon approaching the place where the said train was stopped I observed an aggregation of men of about 25 in number near the right of way of the said vailroad. After the said train came to a stop some of the men from the said mob cante up nearly where the engine of the said train had stopped. The said train then started moving in a westerly direction. Some of the men from said moo moved toward the engine, and as the engine was traveling slowly westwardly past the said mob, I saw Frank W. Lucas

throw a bottle into the cab of the engine, and immediately thereafter saw flames envelop the interior of the cab of said engine. I also saw some other person, a member of said mob, throw another bottle into the cab, but I do not know the name of the person who threw that bottle. At the time the said bottle was thrown into the said cab, it appeared that the bottle contained fluid. The bottle

appeared to be a whiskey bottle.

Immediately after Frank W. Lucas threw said bottle into the cab of the engine, he ran and got into an automobile driven by Leo Totten, the engine of which automobile was running, and was headed toward Peoria. The said Totten immediately started said automobile in a northerly direction; affiant following said automobile finally overtook it at or near the corner of Western and South Adams Street, in the City of Peoria, and forced the said Totten to stop said automobile and remain until the police officers arrived and took possession of the said Frank W. Lucas and Leo Totten.

Affiant further states that after he accompanied the said Frank W. Lucas and Leo Totten to the city hall in the ·City of Peoria, where the said parties were placed under arrest by the police officers, he returned in his automobile to Canton, Illinois, and made an examination of the said locomotive, which said locomotive had by that time reached the city of Canton. Upon examination of the interior of the cab of said locomotive, he found that the engineer's seat had been burned, and the glass on one of the gauges on said locomotive had been broken. He observed that Homer Gulick had been injured as a result of the fire caused by the burning of the substance in said bottles. the said engineer's face was burned, and also his evebrows. Affiant further states that the odor from the contents of the bottle thrown in the locomotive was still present, and that he observed the said odor, and it was that of either gasoline or benzine. Affiant further states that he had the police officers in the city of Canton take ·possession of the broken glass from the bottle, and directed said police officers to seal the same and preserve to be used as evidence.

Further affiant saith not.

Harold E. Kipling 1/8/

. Subscribed and sworn to before me on this the 2nd day of July, 1942.

Francess M. Cassidy /s/ Notary Public.

Endorsed: Filed January 3, 1942. G. W. Schwaner, Clerk.

(Seal)

54 And afterwards, to-wit: on the 3rd day of January, Entered A. D. 1942, at 3:50 o'clock p. m., certain Finding of 180. Facts on Application for a Temporary Restraining Order was filed in the office of the clerk of said court and entered of record in said cause, which said Finding of Facts was and is in the words and figures following, to-wit:

IN THE UNITED STATES DISTRICT COURT. (Caption-P-149)

FINDINGS OF FACTS ON APPLICATION FOR A TEMPORARY RESTRAINING ORDER.

(a) The plaintiff is a corporation duly organized and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa, through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the states of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the State of Illinois; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended; and as such carrier subject to and included within the words "War Materials" as defined by the Federal Stat-

(c). The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various

branches or spurs connecting with other interstate rail-

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941:

and that said employees were withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941, and have since refused to return to their respective places of employment with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials; arms; armaments, ammunition, livestock, clothing, food, food stuffs, fuel supplies, musitions and other articles and ingredients thereof intended for. or suitable for, the use of the United States or associated nations in connection with the conduct of war: that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered. with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being prevented, from the transportation of such articles in interstate commerce.

(f) That the defendants and other persons who have congregated with them have some upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason

of their fear of violence and injury; and the said de-58 fendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each of the following days: December 29, 1941, December 30, 1941, December 31, 1941 and January 2, 1942.

(g) That the defendants, on or about December 29, 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plaintiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon

its said railroad.

- That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them; have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles, and have, by force and threats of personal violence, prevented emplovees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said employees of the plaintiff in the event said employees continued in their said employment and have threatenedother employees by ordering them to remain away from the premises of the plaintiff and not return to their respective places of employment:
- 59 (i) That by reason of the unlawful and unanthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the movement of interstate commerce.

(j) That on December 31, 1941, and again on January

2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants tarveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and threw stones, bricks, and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.

(k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Canton, Fulton County, Illinois; and at a point near the switch track of the Allied Mills two of said defendants wilfully and maliciously threw glass whiskey bottles with benzine or gasoline into the cab of said engine drawing said train, causing the said substance to explode and set fire to the said locomotive engine and inflicting serious burns upon the engineer and other employees of the plaintiff on said

engine.

60 That on January 2, 1942, certain of said defendants threatened the employees of the plaintiff by advising them that if they, the said employees, took the train of the plaintiff out of Peoria to the western division of said railroad, that said employees would never get back, meaning and intending to commit bodily injury or harm to said employees in the event that they, the said employees, attempted to operate said train of the plaintiff from Peoria to Keokuk, Iowa; and at various points along said railroad right of way the said defendants congregated and made divers other threats to the employees of said plaintiff as they were attempting to operate said train from Peoria to Keokuk, Iowa; and said defendants traveled in automobiles along the highway adjacent to and parallel with said railroad, and at many points where said train was required to stop while in the county of Peoria. the said defendants continued their threats and acts of intimidation and violence and threw stones, bricks, clubs

and other missiles at said train and the crew operating the same; and all of said acts found in this paragraph occurred before the said train described in the preceding paragraph reached the point near the switch track of the Allied Mills, when the attempt was made by certain of said defendants to burn said locomotive and injure the employees of the plaintiff therein riding; that all of the acts found to have been committed and set forth in this and preceding paragraphs resulted in the delay and interruption of the interstate commerce business of the said plaintiff, and if the said unlawful acts and threatened continuation of similar unlawful acts is not restrained by this Court, the prosecution of the business of the plaintiff as an interstate carrier will be entirely prevented.

(m) That on December 29, 1941, the said defendants greased the high rail, on a curve in the plaintiff's railroad

track on New Philadelphia hill in the county of Medonough, in the State of Illinois, and that when the en-

gine and train of the plaintiff reached said greased rail, the engine and train were caused to slip and slide; that the said defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plaintiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon, Webster, Leonard, Forrest, LaHogue, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover or ascertain that said switches had been thrown; and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss and damage to the property of the plaintiff and injury to the persons operating said trains.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said

railroad

(p) That on December 29, 1941, on December 31, 1941, and on January 2, 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interestate connecting railroads were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered

to the plantiff might be transported on the railroad of the plaintiff, and which said cars then and

there contained interstate commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interestate carriers while said crews are attempting to make delivery of interstate commerce to plaintiff.

(q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts;

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the

transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

(v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a com-

mon carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three

Thousand (\$3,000.00) Dollars.

That said defendants, or some one, or more of them, at various times since the 29th day of December; 1941, and continuing up until the time of the filing of this complaint, have been guilty of acts of violence and threats of violence against various employees of the plaintiff and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said defendants have threatened that they will continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court and this order; and the Court finds from the sworn evidence heard upon hearing of this application: that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them; and that if notice of the application of plaintiff for this restraining order is given to the defendants that more acts of violence and damage to property will occur before hearing may be had; and the Court further finds that by reason of such acts of violence and continued threats of acts of violence, that a temporary restraining order should be issued, without notice to the defendants; that to give notice to said defendants of such application will result in continued and increased acts of violence and injury to employees of the plaintiff and damage to its property.

January 3; A. D. 1942.

/s/ J. Leroy Adair,

Judge.

Endorsed: Filed Jan. 3, 1942, at 3:50 o'clock p. m. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 3rd day of January,
A. D. 1942, at 3:50 o'clock p. in., a certain Temporary'
Restraining Order was filed in the office of the clerk of
said court and entered of record in said cause, which said
Temporary Restraining Order was and is in the words
and figures following, to-wit:

Entered 65 Jan. 3, 1942.

IN THE UNITED STATES DISTRICT COURT. * (Caption—P-149) *

TEMPORARY RESTRAINING ORDER.

This cause now coming on to be heard upon the verified complaint of the plaintiff herein for temporary restraining order, without notice, and the Court having heard the oral testimony under oath produced in support of said verified complaint, sufficient if sustained, to justify the Court in issuing a temporary injunction upon a hearing after notice, and the Court having considered the same,

upon consideration thereof, finds:

and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the states of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the State of Illinois; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended, and as such carrier subject to and included within the words "War Materials" as defined by the Federal Stat-

utes.

(c) The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various branches or spurs connecting with other interstate rail-

road carriers.

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said

Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941; and that said employees were withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941, and have since refused to return to their respective places of employment, with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials, arms, armaments, ammunition, livestock, clothing, food, food stuffs, fuel supplies, munitions and other articles and ingredients thereof intended for, or suitable for, the use of the United States or associated nations in connection with the conduct of war; that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being preented, from the transportation of such articles in interstate commerce.

(f) That the defendants and other persons who have congregated with them have come upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence

have caused other employees of the plaintiff to cease their employment and remain away from their work by reason of their fear of violence and injury; and the said defendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each

of the following days; December 29, 1941, December 30,

1941, December 31, 1941 and January 2, 1942.

That the defendants, on or about December 29. 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plain-tiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon its said railroad.

(h) That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them, have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles, and have, by force and threats of personal violence, prevented employees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said em-

ployees of the plaintiff in the event said employees continued in their said employment and have threatened other employees by ordering them to remain

away from the premises of the plaintiff and not return to

their respective places of employment.

That by reason of the unlawful and unauthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the movement of interstate commerce.

(j) That on December 31, 1941, and again on January 2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants traveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and

threw stones, bricks, and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.

(k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Canton, Fulton County, Illinois; and at a point near the switch track of the Allied Mills two of said defendants wilfully and maliciously threw glass whiskey bottles with

benzine or gasoline into the cab of said engine drawing said train, causing the said substance to explode and set fire to the said locomotive engine and inflicting serious burns upon the engineer and other employees of the

plaintiff on said engine.

That on January 2, 1942, certain of said defendants threatened the employees of the plaintiff by advising them that if they, the said employees, took the train of the plaintiff out of Peoria to the western division of said railroad, that said employees would never get back, meaning and intending to commit bodily injury or harm to said employees in the event that they, the said employees, attempted to operate said train of the plaintiff from Peoria to Keokuk, Iowa; and at various points along said railroad right of way the said defendants congregated and made divers other threats to the employees of said plaintiff as they were attempting to operate said train from Peoria to Keokuk, Iowa; and said defendants traveled in automobiles along the highway adjacent to and parallel with said railroad, and at many points where said train was required to stop while in the county of Peoria, the said defendants continued their threats and acts of intimidation and violence and threw stones, bricks, clubs and other missiles at said train and the erew operating the same; and all of said acts found in this paragraph occurred before the said train described in the preceding paragraph reached the point near the switch track of the Allied Mills, when the attempt was made by certain of said defendants to burn said locomotive and injure the employees of the plaintiff therein riding; that all of the acts found to

71 have been committed and set forth in this and preceding paragraphs resulted in the delay and interruption . of the interstate commerce business of the said plaintiff,

and if the said unlawful acts and threatened continuation of similar unlawful acts is not restrained by this Court, the prosecution of the business of the plaintiff as an in-

terstate carrier will be entirely prevented.

That on December 29, 1941, the said defendants greased the high rail on a curve in the plaintiff's railroad track on New Philadelphia hill in the county of McDonougk, in the State of Illinois, and that when the engine and train of the plaintiff reached said greased rail, the engine and train were caused to slip and slide; that the said defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plain-

tiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon, Webster, Leonard. Forrest, LaHouge, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover or ascertain that said switches had been thrown: and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss

and damage to the propert of the plaintiff and injury

to the persons operating said trains.

That on December 31, 1941, one telegraph line. ef plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said railroad.

That on December 29, 1941, on December 31, 1941. and on January 2, 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interestate connect ing railroads, were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered to the plaintiff might be transported on the railroad of the plaintiff, and which said cars then and there contained interstate commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interestate carriers while said crews are attempting to make delivery of interstate commerce to plaintiff.

73 (q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts:

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the

transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the em-

ployees of plaintiff.

(v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three Thousand (\$3,000,00) Dollars.

(w) That said defendants, or some one, or more of them, at various times since the 29th day of December, 1941, and continuing up until the time of the filing of this complaint, have been guilty of acts of violence and threats

of violence against various employees of the plaintiff and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said defendants have threatened that they will

continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court and this order; and the Court. finds from the sworn evidence heard upon hearing of this application that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them; and that if notice of the application of plaintiff for this restraining order is given to the defendants that more acts of violence and damage to property will occur before hearing may be had; and the Court further finds that by reason of such acts of violence and continued threats of acts of violence, that a temporary restraining order should be issued, without notice to the defendants; that to give notice to said defendants of such application will result in continued and increased acts of violence and injury to employees of the

plaintiff and damage to its property.

Now, Therefore, Hereby Duly Ordered, Adjudged And Decreed By The Court that the defendants in said cause, namely Brotherhood of Railroad Trainmen, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Enginemen, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, J. L. Fueger. Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, and all persons to whom knowledge of this Temporary Restraining Order or any writ issued pursuant hereto shall come, be and each and all of them are hereby temporarily commanded, enioined and restrained from:

(1) Assaulting or attempting to injure by violence, or otherwise, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the

plaintiff:

Intimidating or attempting to infimidate, by force or violence or personal assault, employees or officers of the plaintiff to keep them from returning to work and continuing their work with the plaintiff or those desiring to

enter the employ of the plaintiff:

(3) Congregating on picket lines in the vicinity of the premises of the plaintiff in numbers in excess of the number fixed by order of the Court, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those desiring

to work for the plaintiff, from entering or reaching the

premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff in the operation of its railroad, or the receipt of transportation or delivery of interstate freight consigned to it or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the operation of

plaintiff's railroad.

(5) From cooperating, confederating and conspiring for the purpose of in any way interfering with the plaintiff in the handling of war and national defense material; including arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions and all other articles of whatever description, and any part or ingredient thereof, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from interfering with the handling of any and all material on its trains consigned or moving in interstate commerce.

(6) From congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent, by threats or intimidation or violence, or threats of violence, any person from engaging in or remaining in

the employ of the plaintiff.

(7) Singly or in combination or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force or intimidation or by the use of profane, insulting or abusive language, or by force and violence or threat of violence, to any person being employed by the

plaintiff, or engaged in or remaining in the employment of the plaintiff or in performing any business, labor or

duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plain-

tiff, or about to enter the employ of the plaintiff, not to

remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threats of violence with the movement or passage of any person toward, to, upon or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois, or from points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate commerce.

By violence or threat or violence, molesting or threatening any member of the family of any employee or officer, or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family of any

such employee or officer.

Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with intention of committing any act of violence upon any en ployee or officer of the plaintiff or any one desiring to

enter the employ of the plaintiff.

Firing any shot or missile, rock or stone or club at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and enjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.

(14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence or threat of force or violence seeking to prevent employees of the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or

attempting to damage or injure any of the property of the plaintiff used in the transportation of Interstate Commerce

including any other property of the plaintiff.

(16) From destroying or attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or otherwise interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in the transportation of freight in interestate commerce.

79 (17) From tampering with, damaging or destroying, or attempting to damage or destroy, any portion of the roadway, ballast, tie and track structure, bridge, culvert, building, signal, telegraph-line, locomotive, car, or any other building, structure, piece of machinery or equipment used by plaintiff in its business.

This temporary restraining order shall be and remain in force for a period of five (5) days unless sooner modified

or changed by the order of the Court.

The plaintiff shall file an undertaking with adequate security in an amount in the sum of Three Thousand (\$3,000) Dollars, conditioned that it recompense those enjoined for any loss, expense or damage caused by the issuance of this temporary restraining order, including all reasonable costs together with reasonable attorneys' fees and expenses of defense against the granting of this temporary restraining order, if it shall be held to have been improvidently granted by the further order of this Court.

Nothing herein contained shall be construed to prevent (1) ceasing or refusing to perform any work to remain in any relation of employment; (2) becoming or remaining a member of any labor organization or of any employer organization regardless of any such undertaking or promise as is described in Section 103 (Act March 23, 1932, Chapter 90, Sec. 3, 47 Stat. 70 (29 U. S. C. A. Par. 103); (3) paying or giving to or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance or other moneys or things of yalue; (4) by all lawful means aiding any person participating or interested in any labor dispute

who is being proceeding against in or in prosecution 80 of any action or suit in any court of the United States or in any State: (5) giving publicity to the existence of/or the facts involved in any labor dispute, whether by advertising, speaking, patroling, or by any other method not involving fraud or violence; (6) assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; (7) advising or notifying any person of an intention to do any of the acts heretofore specified in this paragraph; (8) agreeing with any other person to do or not to any of the acts heretofore in this paragraph stated; and (9) advising, urging or otherwise causing or inducing without fraud or violence, the acts heretofore in this paragraph specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter.

Nothing herein shall prevent the defendants from having not to exceed Three (3) persons act as pickets at each of the points of entrance to the properties and premises of the plaintiff, but said pickets shall be unarmed and shall not carry or display, clubs or other instruments of violence and shall not at any time resort to violence or threats of violence in preventing or attempting to prevent employees or others entering or leaving the premises of the plaintiff, and said pickets shall not by violence or threat of violence

intimidate or attempt to intimidate any person in 81 having free access, ingress and egress to and from the premises of the plaintiff.

Application for temporary injunction is set for hearing at Peoria, Illinois, on January 8th, A. D. 1942, at 10 o'clock,

A. M.

J. Leroy Adair,

Judge.

Signed this 3rd day of Jan. 1942 at 3:50 P. M. (Seal)

J. Leroy Adair.

Indorsed: Filed Jan. 3, 1942 at 3:50 P. M. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 3rd day of January, A. D. 1942; a certain Bond was filed in the office of the clerk of said court and approved by the Court, which said Bond and Approval was and is in the words and figures, following, to-wit:

Filed

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149)

Know All Men By These Presents, That Toledo, Peoria & Western Railroad, as principal, and Geo. P. McNear, Jr., as surety, are held and firmly bound unto the defendants in the above entitled cause in the penal sum of Three Thousand Dollars, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and firmly by these presents.

Witness our hands and seals this 3rd day of January,

A. D. 1942:

The condition of the above obligation is such that whereas, Toledo, Peoria & Western Railroad, as plaintiff in the above entitled cause has filed its complaint against the defendants and has made application to the court for the issuance of a temporary restraining order against the defendants pending the hearing of the application for a

temporary injunction; and

Whereas, the District Court of the United States for the Southern District of Illinois, Northern Division, has issued its temporary restraining order pending the hearing upon the application of the plaintiff for a temporary injunction on condition, however, that said plaintiff shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient, to recompense those enjoined or restrained for any loss, expense, or damage caused by the improvident or erroneous issuance of such restraining order, including all reasonable cost (to-

gether with a reasonable attorney's fee) and expense 84 of defense against such temporary restraining order or against the granting of any injunctive relief sought in this proceeding and subsequently denied by the court.

Now, Therefore, if said Toledo, Peoria & Western Railroad shall well and truly recompense the defendants enjoined or restrained for any loss, expense, or damage caused by the improvident or erroneous issuance of such restraining order, including all reasonable costs (together with a reasonable attorney's fee) and expense against such restraining order or against the granting of any injunctive relief sought in this proceeding and subsequently denied by the court; then this obligation to be void,

otherwise to remain in full force and effect.

The principal and surety herein submit themselves to the jurisdiction of the court for the purpose of enforcing the conditions of this bond if it shall be held that the granting of the temporary restraining order was improvident or erroneous or if the granting of injunctive relief sought in this proceeding is subsequently denied by the court.

> Toledo, Peoria & Western Railroad, By /s/ Geo. P. McNear, Jr.,

(Corporate Seal)

President.

Attest:

/s/ Louis Rider, Assistant Secretary.

/s/ Geo. P. McNear, Jr. (Seal)

85 State of Illinois, County of Peoria. } ss.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid, do hereby certify that Geo. P. McNear, Jr., President of Toledo, Peoria & Western Railroad, and personally known to me to be said officer, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as the free and voluntary act of said Toledo, Peoria & Western Railroad for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of

January, A. D. 1942.

/s/ Esther M. Schulthes, Notary Public.

State of Illinois, County of Peoria.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid, do hereby certify that Geo. P. McNear, Jr.; personally known to me to be the same person who signed the above and foregoing instrument as surety, appeared before me this day in person and acknowledged that he signed, sealed and delivered said

instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of

January, A. D. 1942.

(Notary Seal)

/s/ Esther M. Schulthes, Notary Public.

86 State of Illinois, County of Peoria. ss.

Geo. P. McNear, Jr., being first duly sworn, deposes and says that he is the owner of real and personal property in the County of Peoria and State of Illinois of the value in excess of Ten Thousand Dollars (\$10,000.00) over and above all encumbrances, exemptions, and liens; that he makes this affidavit for the purpose of qualifying as surety in the above and foregoing bond.

/s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 3rd day of January A. D. 1942.

(Notary Seal) /s/ Esther M. Schulthes, Notary Public.

On the back thereof appears the following: 1-3-42 Said bond approved. /s/ J. Leroy Adair, Judge.

Endorsed: Filed Jan. 3, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 5th day of January,
A. D. 1942, a certain Order as to Service of Notice
on Public Officials of Application for Temporary Injunction, was filed in the office of the clerk of said court and
entered of record in said cause, together with the Certificate of the Clerk of Mailing Printed Certified Copies of
Temporary Restraining Order, which said Order and Certificate were and are in the words and figures following,
to-wit:

Entered 88 IN THE DISTRICT COURT OF THE UNITED STATES.

1942.

(Caption—P-149)

ORDER AS TO SERVICE OF NOTICE ON PUBLIC OFFICIALS OF APPLICATION FOR TEMPORARY INJUNCTION.

This cause now coming on to be heard upon the motion of the plaintiff by its attorneys for an order directing the manner of service of notice upon Public Officials of the time of hearing of application for temporary injunction; and the Court now being fully advised in the premises, upon consideration thereof, It Is Hereby Ordered And Directed that the Clerk of this Court mail a printed Certified copy of the Temporary Restraining Order heretofore issued herein on January 3, 1942, which Order sets the application for temporary injunction for hearing on January 8, 1942 at ten a. m., to the following Public Officials:

Sheriff of Iroquois County, Watseka, Illinois
Sheriff of Ford County, Paxton, Illinois
Sheriff of Livingston County, Pontiac, Illinois
Sheriff of McLean County, Bloomington, Illinois
Sheriff of Woodford County, Eureka, Illinois
Sheriff of Tazewell County, Pekin, Illinois
Sheriff of Peoria County, Illinois
Sheriff of Fulton County, Lewistown, Illinois
Sheriff of McDonough County, Macomb, Illinois
Sheriff of Hancock County, Carthage, Illinois
Sheriff of Henderson County, Oquawak, Illinois

It Is Further Ordered And Directed that the Clerk 89 also mail copies of printed Temporary Restraining Order to the Chief of Police of the Following cities located on the line of the plaintiff's railroad:

Sheldon, Illinois
Watseka, Illinois
Crescent City, Illinois
Gilman, Illinois
Piper City, Illinois
Chatsworth, Illinois
Forrest, Illinois
Firbury, Illinois
Chenoa, Illinois
Gridley, Illinois

East Peoria, Illinois
Peoria, Illinois
Bartonville, Illinois
Village of Kingston Mines, Ill.
Glasford, Illinois
Canton, Illinois
Cuba, Illinois
Smithfield, Illinois
Bushnell, Illinois
Good Hope, Illinois

El Paso, Illinois Secor, Illinois Eureka, Illinois Keokuk, Iowa Washington, Illinois Hamilton, Illinois Sciota, Illinois Blandinsville, Illinois LaHarpe, Illinois Ferris, Illinois Elvaston, Illinois Warsaw, Illinois

J. Leroy. Adair /s/ Judge.

Certificate of Mailing Printed Certified Copies of Temporary Restraining Order.

I, G. W. Schwaner, Clerk in and for the District Court of the United States for the Southern District of Illinois, hereby certify that I have this day deposited in the United States Post Office at Peoria, Illinois, printed copies of the certified copy of Temporary Restraining Order, addressed to the following, in accordance with the foregoing order of Court:

Sheriff of Iroquois County, Watseka, Ill.; Sheriff of Ford County, Paxton, Ill.; Sheriff of Livingston County, Pontiac, Illinois; Sheriff of McLean County, Bloomington, Ill.; Sheriff of Woodford County, Eureka, Ill.; Sheriff of Tazewell County, Pekin, Ill.; Sheriff of Peoria County, Ill.; Sheriff of Fulton County, Lewistown, Ill.; Sheriff of McDonough County, Macomb, Ill.; Sheriff of Hancock County, Carthage, Ill., and Sheriff of Henderson County, Oquawka, Ill., and to the Chief of Police in each of the following cities: Sheldon, Ill., Watseka, Ill., Crescent City, Ill., Gilman, Ill., Piper City, Ill., Chatsworth, Ill., Forrest, Ill., Fairbury, Ill., Chenoa, Ill., Gridley, Ill., El Paso, Ill., Secor, Ill., Eureka, Ill., Keokuk, Iowa, Washington, Ill., Hamilton, Ill., East Peoria, Ill., Peoria, Ill., Bartonville, Ill., Village of Kingston Mines, Ill., Glasford, Ill., Canton, Ill., Cuba, Ill., Smithfield, Ill., Bushnell, Ill., Good Hope, Ill., Sciota, Ill., Blandinsville, Ill., LaHarpe, Ill., Ferris, Ill., Elvaston, Ill. and Warsaw, Ill.

In witness whereof I hereunto set my hand and affix the seal of this Court at Peoria, Illinois, this 5th day of Jan-

uary, A. D. 1942.

G. W. Schwaner,

Clerk.

./s/ Daul W. McCann, Deputy Clerk.

(Seal)

Endorsed: Filed Jan. 5, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 8th day of January,
A. D. 1942, at 3:15 o'clock p. m., a certain Order Extending and Continuing in Force Temporary Restraining
Order was filed in the office of the Clerk of said Court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

91 IN THE UNITED STATES DISTRICT COURT.

* (Caption—P-149) * *

ORDER EXTENDING AND CONTINUING IN FORCE TEMPORARY RESTRAINING ORDER.

This cause now coming on to be heard upon the application of the plaintiff for a temporary restraining injunction as prayed in the complaint, and for an order extending and continuing in force the temporary restraining order entered herein January 3, 1942; and the court having heard a portion of the evidence offered on behalf of the plaintiff in support of its application for temporary injunction on this date and it appearing to the court that the hearing on the application for temporary injunction cannot be concluded and a decision rendered thereon before the expiration of said temporary restraining order heretofore issued, finds that it is necessary that said temporary restraining order be extended and continued in full force and effect for a period of Nine (9) days from this date; and counsel for defendants having objected to the extension of said temporary restraining order and the court having overruled said objection.

Upon Consideration Thereof, It Is Ordered, Adjudged And Decreed that the temporary restraining order here-tofore entered herein, under date of January 3, 1942 92 at 3:50 o'clock p. m., be and the same is hereby extended and continued in full force and effect until January 17th, 1942, pending the completion of the hearing of plaintiff's application for temporary injunction herein and the decision of this court upon said application.

This order is entered extending and continuing in full force and effect said temporary restraining order because of the inability of the court to complete the hearing on the application of the plaintiff for a temporary injunction and the decision of the court on such application.

/s/ J. Leroy Adair,

Judge.

Entered: January 8, 1942 at 3:15 o'clock p. m.

Read by Louis F. Knoblock Jan. 8, 1942 at 2:15 p. m. one of the attys for all of the defendants.

Endorsed: Filed Jan. 8, 1942, at 3:15 o'clock p. m. G. W. Schwaner, Clerk.

98 IN THE DISTRICT COURT OF THE UNITED STATES.

* (Caption—P-149) * *

Appearances:

John M. Elliott, Esq., Clarence W. Heyl, Esq., Appearing for the plaintiff.

Cassidy, Knoblock & Sloan, by Louis F. Knoblock, Esq., George Donaldson, Esq., Appearing for the defendants.

Be It Remembered And Certified that heretofore, to wit, on the 8th, 9th, 10th, 12th, 13th, 14th, 15th, 16th and 19th days of January, A. D. 1942, they being regular days of the October, 1941, Term of said court aforesaid, before the Honorable J. Leroy Adair, one of the Judges of said Court, the foregoing cause come on for trial, and the following proceedings were had, to wit:

99

EXHIBITS.

(Continued.)		
	Admitte	d
Plaintiff's Exhibit 29—Telegram	1043	
30—Telegram	1043	
31—Telegram	1043	
Marked for identification.		*

Plaintiff's	Exhibit 32—Cloth or cover	1220
	33—Box of rocks, etc.	1220

100

10 o'clock A. M. January 8, 1942.

The Court: Any preliminary matter, gentlemen?

Are you ready to proceed?

Mr. Knoblock: Well, yes, there are some preliminary matters. One that I think we ought to straighten out definitely is the matter of the stipulation that Mr. Elliott and I talked about over the telephone about certain documents involving certain defendants.

The Court: Have you such a stipulation?

Mr. Knoblock: We have none written. We would like to make that orally at this time.

Mr. Elliott: It wasn't possible to get all of the documents ready. I told them they could file them later.

The Court: Answer or motion?

Mr. Elliott: Yes.

The Court: State the stipulation to the reporter.

Mr. Elliott: We want to know what it is.

Mr. Knoblock: Naturally we are going to file some affidavits, and we are going to file some motions and answers.

(Discussion off the record.)

Mr. Knoblock: It is stipulated by and between the parties hereto, through their respective attorneys, that all the defendants herein shall be permitted to file answers and appropriate motions subsequent to the hearing of the oral testimony taken in said cause as soon as is reasonably convenient, or upon order of the court.

Mr. Elliott: I would like to know what you mean by 101 "appropriate motions." I would like for you to

specify the motions.

Mr. Knoblock: 1 will tell you this: We will file motions on behalf of various defendants that no allegations are sufficient against them to state a cause of action.

Mr. Elliott: That will be in the nature of a demurrer?

Mr. Knoblock: It is in our Practice Act.

Mr. Elliott: Under the Practice Act?

Mr. Knoblock: And I shall file answers denying those portions of the complaint that are properly deniable, and admitting those parts that should be properly admitted. I shall file further motions that the entire complaint is insufficient in law and that it is defective, and I will file

further motions requesting that the temporary restraining order be lifted in accordance with the law, also that the other injunctions prayed for be denied on behalf of all defendants.

(Discussion off the record.)

Mr. Heyl: We will have to have something more than that stipulation, and that is this: That the parties agree that during the pendency of this case and the time intervening until the case is decided that the restraining order shall be continued in force.

Mr. Knoblock: During the pendency of this hearing?

Oh, no!

Regardless of how many written motions I may have had on file this morning, if this hearing continues 102 for five or six days or two weeks, your temporary restraining order goes off.

The Court: I don't so understand it. I would have to

have some authorities.

Mr. Heyl: Oh no! The court has the right to enter the order.

The Court: I think it holds until such time as the matter is decided. That is why you should get your answer on file. I can't decide it for you with your stipulation until you file some answer.

Mr, Elliott: The temporary restraining order will be

continued throughout the hearing.

The Court: I don't think there is any question about it.

(Discussion off the record.)

The Court: I have also understood that it is extended within the period of the hearing. That is why I have insisted on it being heard in the five days, but I will extend it during the time of the hearing.

Mr. Heyl: Of course, if this stipulation that he wants, after the hearing of oral evidence that he may have the right to file answers and motions, then the order shall be

extended over that period.

Mr. Knoblock: While we are hearing this case, it seems it will involve such time I wouldn't be surprised that my answers and motions were on file during the time of the hearing.

The Court: It will be extended during the time of hearing. If your pleadings aren't on file, it will be ex103 tended.

Mr. Heyl: Your stipulation should be withdrawn.

Mr. Knoblock: What stipulation? What are you talk-

ing about?

Mr. Heyl: You asked after the hearing you shall have the right to file answers and motions and affidavits, and we are willing to do that but, if we do, we want the restraining order extended to cover that period, whatever it may be.

It would seem during the time of this The Court:

hearing it will be extended.

Mr. Knoblock: I think the proper time to take that up is at the conclusion of this hearing.

Mr. Elliott: We will withdraw from the stipulation: The court can decide that after the Mr. Knoblock: hearing of this evidence.

Mr. Heyl: We don't want to be bound by this stipula-

tion.

The Court: I think it is within the power of the court to extend it until it is filed.

Mr. Elliott: That's all we care for.

Mr. Heyl: We are willing to accommodate him, but we want this restraining order extended.

The Court: It seems you are quibbling about something

you can avoid.

Let's call the witnesses.

Mr. Knoblock: Another thing I would like to do is make a motion that all witnesses in this case who are not parties defendant or plaintiff be excluded from the court room.

Mr. Heyl: We want to object to that. It is a hardship on these witnesses because there is no place in this building to put them. There isn't any reason for the motion unless he shows some ground for it.

The Court: I understand he is entitled to the motion. It is a hardship on all of us, and I don't know where I

will put them, but I will grant it.

Mr. Marshal, can you use the jury room for this pur-There are two sets of witnesses.

Mr. Elliott: We may want to use Mr. McNear. should be present, and Mr. Sprague, who is an attorney.

The Court: They may remain. I will permit that. of you who have been called as witnesses will remain outside of the court room until you have testified. After you have testified, you may come back and sit in the court room.

(Discussion off the record.)

Mr. Knoblock: There are a number of T. P. & W. men who are not parties defendant. We don't know whether they are witnesses or not. I request that all T. P. & W. men, whether they have been notified to testify, unless they are actual defendants. I want them out of the room.

The Court: You mean all former employees of the T. P. & W. are to remain outside the room whether they have been subpoenaed or not? That is your request?

Mr. Knoblock: That is right, except those who are

actually defendants.

105 Mr. Elliott: And Mr. Sprague and Mr. McNear may stay.

Mr. Heyl: Mr. Best, Mr. Sprague and Mr. McNear.

Mr. Best is an officer.

The Court: They may remain.

Mr. Elliott: Mr. Gifford is trainmaster.

The Court: They may remain. (Discussion off the record.).

The Court: Call your witnesses. I take it one of you had better remain back at the door. I don't know how you will arrange it.

Mr. Heyl: I would like to call Mr. F. W. Coyle as an

adverse witness for cross-examination.

The Court: All right!

FRANK W. COYLE, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Cross-Examination by Mr. Heyl.

What is your name?

Frank W. Coyle;-

Where do you live?

-C-o-y-l-e. St. Paul, Minnesota. A.

And what is your business or profession?

Vice president, Brotherhood of Railroad Trainmen.

Q. And is that the national organization?

International organization.

106 Q. International organization? Yes.

And how long have you been in Peoria, or how long were you in Peoria prior to December 28, 1941?

A. I arrived in Peoria the evening of December 12.

Q. And were you in Peoria prior to that time?

A. Yes, I was.

Q. When?

A. November 16 I arrived prior to that time.

Q. But you have been here continuously since the last time you arrived here, is that right?

A. Beg your pardon?

Mr. Heyl: Read it to him. (Question read by reporter.)

A. Continually since December 12?

Q. Yes.

A. Yes, sir.

- Q. What have you been doing since you have been in Peoria?
- A. Representing the Brotherhood of Railroad Trainmen as the vice president.

Q. Where have you been residing since you came here!

A. At the Jefferson Hotel.

Q. Is there any other officer of the Brotherhood, your Brotherhood, here in Peoria?

A. Do you mean representatives of our Grand Lodge?

Q. Representatives of your union or Brotherhood.

A. Well, we have various officers. We have general chairmen of the different railroads.

·Q. I am asking you if they are here in Peoria, any of the national officers, in addition to yourself.

107 A. May I have the question cleared up, please?
You first asked if there was any officers of the Brother-hood.

Q. If you can't understand it, I will ask you another question. Are there any other officers of your international organization here in Peoria?

A. None.

Q. Have there been since you arrived on December 12, 1941?

A. None.

Q. Now, do you know one of the defendants, W. C. Keiser?

A. Yes, sir.

Q. What is his connection or business?

A. Mr. Keiser is vice president of the Brotherhood of Locomotive Firemen and Enginemen.

Q. Do you know when he arrived in Peoria?

A. No, I don't.

Q. Has he been here since you arrived?

A. Yes, sir.

Q. Was he here when you arrived?

A. No, sir.

Q: When did he arrive?

A. He arrived-

Mr. Knoblock: I object as having been asked and answered. He stated he didn't know.

The Court: I think he stated he didn't know, but he

may answer.

A. He arrived several days after I arrived.

Q. What has he been doing since he came to Peoria?

A. I don't get your question. In what respect?

Q. Have you been in contact with him each day?

A. Yes, sir,

108 Q. What have the two of you been doing together since he arrived in Peoria?

A. Handling the respective affairs of our respective organizations.

Q. And he and you have directed the strike that is now on, and was instituted on the 28th day of December, 1941?

A. Yes, sir.

Q. And had full charge of it, haven't you?

A. Well, we are responsible to our chief executives and report to them.

Q. And you have been directing the strike, and what was done in connection with the strike, have you?

A. Yes, sir.

Q. And the strike was called by your two Brotherhoods?

A. Yes, the strike was called by our two Brotherhoods, a legal strike.

Q. Where does Mr. Keiser reside since he came to Peoria?

A. Jefferson Hotel.

Q. And that is where you and Mr. Keiser have had your headquarters and offices, is that right?

A. Yes, sir.

Q. Have you had any lieutenants or assistants in Peoria in the employ of your or the other Brotherhoods?

A. Well, I just don't understand what you mean by

the name of "lieutenants."

Q. Well, anyone in your employ. We will leave out

the lieutenants. Did you have anyone in your employ or under your direction?

A. No. No, sir. Q. No one at all?

- A. No. sir.

109 Q. I will ask you if you had in your employ or under your direction a man in Peoria who was commonly referred to as "Red?"

A. No, sir. In my employ?

Q. Or under your direction or under the direction of Mr. Keiser, that was operating and working in connection with this strike?

A. Referred to as "Red"?

Q. Do you know a man that had something to do with this strike that was commonly referred to as "Red"?

A. There is an employee of the T. P. & W. referred to as "Red."

Q. Former employee? A. I said "employee."

Q. Is he now out on strike?

A. Yes, sir.

Q. Did you have a conversation with A. E. Stonebock, the sheriff of Peoria County, with reference to that man!

A. Stonebock of what county?

Q. Sheriff of Peoria County.

A. No, sir.

Q. At no time?

A. I have never met Sheriff Stonebock.

Q. I will ask you if you ever had a conversation with the sheriff of Peoria County?

A. No, sir.

Q. Or with any of his deputies?

A. No, sir.

Q. About this man "Red"?

A. No, sir.

Q. Did you have a conversation on or about the 29th day of December, 1941, with one J. H. Lowry?

110 Mr. Knoblock: Let's get that date again. Mr. Heyl: 29th of December, 1941.

Mr. Knoblock: Who?

Mr. Heyl: J. H. L-o-w-r-y.

A. I don't recall that I know a J. H. Lowry.

Q. Did you or not, about 8 o'clock the evening of December 29, 1941, have a conversation with J. H. Lowry

with reference to the movement of ice into the plant of the

plaintiff in this case?

A. Well, now, I have had numerous telephone conversations with people that I have never met in a formal way or introduced to. Now, there may be a man by that name, but I don't recall of him calling me up.

Q. Did you have a conversation with him with reference to getting the permission to move ice for the Transit Ice Company which was located on the T. P. & W. property

through the picket lines?.

A. I remember a conversation with some party (I don't recall his name) concerning the movement of ice.

Q. At that time, you told Mr. Lowry, did you not, or whoever the man was, you would not permit this company, the Transit Ice Company, to move ice through the picket line?

A. I told him I wouldn't give him permission to go through the picket line. He wanted me to authorize him or let him go through. He said it wasn't his policy to go through picket lines, and he asked me to give him a letter or permission, which I declined to do.

Q. After you said all that, the substance was you said

he couldn't do it?

Mr. Knoblock: I object. The answer speaks for it-

11. The Court: I think I will sustain that. He told

him he wouldn't give him a letter.

Q. You were out at the premises of the plaintiff in this case on December 28, 1941, were you not? I mean the yards, and the road leading to the yards.

A. Yes, I was.

Q. Now, you arranged for the picket lines, did you not?

A. I instructed the general chairman of the Brother-hood of Railroad Trainmen to take care of placing men on the picket lines.

Q. What is his name?

A. D. G. Newdigate.

Q. Were you out there that day to see that he carried out your orders?

A. I went over the territory prior to 6 P. M. at night. Q. You observed the pickets there that day, did you?

A. I observed the pickets there around about 9 o'clock, yes.

Q. Sunday morning, December 28, 1941?

A. I would say it was around 10 o'clock at night.

Q. A: Was that 10 o'clock at night, you mean?

Yes.

Q. How many were there?

A. I couldn't say. I just drove by. I didn't stop.

Q. What is your best judgment?

A. About six or eight.

Q. You were there on December 29, 1941, were you not?

I don't recall whether I went out on the picket lines December 29.

Were you there on December 30, 1941?

I don't recall definitely whether I did or not.

112 How many picket lines did you establish?

We established a picket line at the lane leading into the yard and around house. We established a picket line at the viaduct, what is called the "viaduct." established a picket line at the freight house.

Do you know how many men were placed on each of

these picket lines?

As I recall, there was about six or eight men placed on the line.

On each line, is that right?

A. I said as I recall, yes.

Now, you also, did you not, established pickets to follow trains?

A. No. sir.

You knew, as a matter of fact, that the men on strike were following trains, did you not? .

A. No. sir.

Q. Did you observe how the men on the picket lines were armed ?

A. No. sir.

Q. They carried clubs, didn't they?

A. No, sir.

Q. At no time?

A. I didn't see any of the pickets carrying clubs.

Q. Were you there each day?

A. No, I didn't go out each day; no, sir.

Did you direct the pickets to stop persons who were seeking to transact business with the plaintiff from going into the premises of the plaintiff from the public highway leading to the premises?

No. sir.

Well, why did you not permit this ice company, then, to go through the picket line?

I had no control over that man.

Q. But you refused permission for him to go through, didn't you?

I didn't have authority to give him permission to go

through.

Q. Well, what did you tell Mr. Lowry?

As I recall, I told him it was up to him, if he wanted to be could go through, if he didn't be didn't have to. He said it wasn't his policy to go through picket lines, he was a union man.

Q. You told him, did you not, at that time that you would not let anyone through, and that the Transit Icing Company should buy ice somewhere else for its customers or to take

to its customers?

A. I don't recall telling him that at all.

Would you say you did or did not say that?

I don't recall.

Did this man come to the hotel, this same individual, about 11:15 on December 30, 1941, to see you?

A. No, sir.

Mr. Heyl: That's all.

The Court: Do you care to cross-examine? Mr. Knoblock: Not at this time, no.

Mr. Heyl: I ask Mr. Keiser to take the stand. We call him as an adverse witness, one of the defendants, for thepurpose of cross-examination.

114 W. C. KEISER, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Cross-Examination by Mr. Heyl.

Q. What is your name?

W. C. Keiser.

And where do you live? Q.

A. Topeka, Kansas.

Q. What is your business or occupation?

I am vice president of the Brotherhood of Locomotive Firemen and Enginemen.

How long have you been residing in the City of Q. Peoria?

A. The last time I returned here on December 27.

Q. When were you here before that? A. I left here on December 20, having been here since November 3.

Q. What was your business here in Peoria?

A. Handling the affairs of the Brotherhood of Locomotive Firemen and Enginemen.

Q. To direct this strike?

- A. Handling the affairs of the men on the Toledo, Peoria & Western Railroad.
 - Q. And you were directing the strike, were you not?

 A. Under the direction of my international president.
 - 2. The international president wasn't here, was he?

A. No. sir.

Q. You were the representative of this Brotherhood in Peoria at the various times you were here?

A. That is correct.

115 Q. And you were personally directing the strike?

A. Under the direction of my international presi-

dent.

Q. And you and the witness who just left the stand, Mr. Fred W. Coyle, were working together in connection with this strike, is that right?

A. Yes, sir.

Q. And do you recall on December 30, 1941, J. H. Lowry coming to you at the Jefferson Hotel in the City of Peoria, and inquiring for Mr. Fred W. Coyle?

A. I don't know anybody by that name.

Q. Do you remember a man accompanying this Mr. Lowry by the name of Schwagmeyer?

Mr. Knoblock: How do you spell that?

Mr. Heyl: S-c-h-w-a-g-m-e-y-e-r.

A. I don't recall the name.

Q. Do you recall the two men coming?

A. There were two men that talked to me, yes, sir.

Q. And you took them to your room in the Jefferson Hotel, did you not?

A. They came to my room.

Q. Your and Mr. Coyle's room? In the same room in the hotel?

A. No, sir.

Q. Do you have a joint room for a business office!

A. No, sir.

Q. Now, they explained to you, did they not, that the ice company was an independent company, and separate from the plaintiff, and that the only road into the plant

where they had their business was the one also used by the

T. P. & W. leading from the hard road to the plant?

116 They told you that, did they not?

Mr. Knoblock: Wait a minute! I want to object to that for the reason this plaintiff can not complain of any of those matters. The only one would be the ice company.

The Court: What is the purpose?
Mr. Heyl: The purpose is to show that this man and the former one directed the operation of everything that was done, including the stopping of trucks belonging to private individuals who have no connection with this company.

We will follow that up by showing what was done in the way of violence to these trucks who tried to drive into these premises. This ice plant happens to be located at the

vards of the T. P. & W.

Mr. Knoblock: We submit the ice company, and not this plaintiff,-

The Court: I don't see what interest the plaintiff would

have in even violence to somebody else. Mr. Heyl: The purpose is to show the extent to which

these men interfered with the business of this plaintiff. The Court: This wasn't the business of this plaintiff. Mr. Heyl: But this tenant had no way of reaching its premises except by going through this highway.

Mr. Knoblock: It would be the tenant's complaint, not

the plaintiff's complaint.

The Court: I think he may answer. I don't see the materiality, but he may answer.

(Question read by reporter.) A: I don't recall that they did.

Mr. Knoblock: I move the answer be stricken.

The Court: It may stand.

Q. You told them, did you not, you would not permit any trucks of this independent ice company, the Transit Ice Company, to use that highway leading from its premises to the hard road?

A. I did not.

Mr. Knoblock: I object as not tending to prove any

The Court: He answered and said he didn't.

I don't see how you are hurt. In cases of this sort, it doesn't seem to affect the record.

Q. I will ask you to tell the court what you had to do with directing or the refusal of permitting carriers in Peoria to deliver cars or freight to the plaintiff.

Mr. Knoblock: I object to that. The Court: Read the question.

(Question read by reporter.)

The Court: I think he may answer that to show his connection.

· A. I had nothing to do with directing men from other railroads.

Q. What did you do about it? What did you have to do

with it. That is what I want to know.

Mr. Knoblock: I wish to object, that other railroads would be involved and not this plaintiff, and not tending to prove any issues in this case.

Mr. Heyl: Yes, it does. It is on this very thing.

The Court: The only purpose I can see is showing 118 the connection between the international Brotherhood and this strike, and that would be the only thing.

Mr. Heyl: That is right.

The Court: Other than that, I don't think it would have any materiality.

He may answer.

(Question read by reporter.)

Nothing other than to advise with the men who came

to me for advice as to the laws of our Brotherhood.

You told them, did you not, it was your desire they discontinue delivering any cars or freight from the P. & P. U. or C. B. & Q. or Rock Island to the T. P. & W.?

A. I did not.

Did you advise any of them to do that? Q.

A. I did not.

Did you tell anyone-

Mr. Knoblock: May I have the last question and answer?

Mr. Heyl: I will withdraw the last question.

Q. Did you request the men on the other lines not to deliver to the T. P. & W .?

Mr. Knoblock: We object.

The Court: What is the difference? Suppose he did. Mr. Knoblock: The purpose is actively interfering with interstate commerce.

The Court: I don't think that has anything to do with this case as long as it doesn't have any force or violence.

Mr. Heyl: We will show there was force and violence in connection with these attempted deliveries.

The Court: I'will sustain the objection.

Mr. Heyl: That is all, Mr. Keiser.

ZENO MERRILL, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Zeno Merrill.

Q. And where do you live?
A. On Route 6, East Peoria.

Q. What is your age?

A. Forty-two.

Q. What is your business or occupation?

A. Engineer.

Q. And where are you employed?

A. T. P. & W. Railroad.

Q. How long have you been employed by that railroad?

A. Since 1922. • Q. Continuously?

A. I was out in '29 and the strike previous.

Q. When were you re-employed?

A. I was reemployed in 1930, October.

Q. Were you continuously employed from that date until the present date?

A. Yes, sir.

Q. And where do you perform your duties?

A. In the yard and on the hill.

Q. What do you mean by the "hill"?

A. Pushing trains.

Q. Up to Washington, Illinois?

A. Yes, sir.

Q. And where are the yards located?

A. In East Peoria.
Q. Tazewell County?

A. In Tazewell County.

Q. Now, on the night of December 30, 1941, were you performing the duties of your occupation?

A. I was on that day, yes.

Q. What was the time that you finished your day's work?

A. 5:30 P. M.

Q. And at what point in the yards did you complete your work?

A. Round house.

Q. Then what did you do?

A. I registered.

Q. What do you mean by that?

A. Registered on the register report that the crews do, made out a work report.

Q. What did you do following that?

A. I called at the office to be taken home. The man said he would take me home.

Q. How far do you reside from the point of your em-

ployment?

A. Approximately two miles.

Q. And to reach your home, what road do you travel?

A. I think it is Route 24 to the junction of 116.

Q. And there is a lane leading from 24 to the plant?

121 A. To the railroad property.

Q. You traveled on that lane?

A. Yes, sir.

Q. Now, will you tell the court what happened as you traveled that lane to reach the hard road, Route number 24!

A. I was being accompanied out the lane by this man in a car, and approaching the hard road became involved in an accident. The car careened to the north side of the road and opposite a fire that the men had had there, the pickets, and the cars were so situated that they blocked the traffic, and the man that collided proceeded forward east to the north side of the road, and that car that I was in pulled a little farther westward or eastward-or westward on the north side of the road, and he got out to go back to talk to this man that he had collided with. It had collided with the left door. . It was a two door car. collided with the left door, and broke the window in this door, and then a couple of men came up to the side and peered through the window of the car, and also same around to the other side, the north side. That door was locked. They later came around to the other side and ordered me out of the car.

Q. Do you know who those men were?

A. I remember them as McMullen and Todd. Q. That is H. O. Todd and Walter McMullen?

A. I think those are the initials.

Q. Will those two gentlemen stand up? (Persons named rise.) Are those the two?

A. Those are the two.

Q. What happened after that?

A. I refused to move out of the car, and the car 122 door was opened by one of the men, and I thought— Mr. Knoblock: I object to this.

The Court: State what happened.

Q. State what happened.

A. I thought—

Q. You can't think. You have to just state what happened. They are objecting to your thinking.

A. Rather than to be dragged out of the car,— Mr. Knoblock: Wait a minute! I object to that.

The Court: I think he may answer. He is different from a lawyer. A man has to think to talk!

Go right ahead and tell us what happened.

A. Rather than to be dragged out of the car, I proceeded out myself, and was told to take my glasses off.

Q. Who told you that?
A. That I can not say.

Q. How many were there then?

A. All I remember is these two men, plus others. I don't know who they were.

Q. You didn't recognize the others?

A. No, sir.

Q. Were you on the public highway at that time?

A. Yes, sir.

Q. What happened following that? Will you tell the whole story to the court?

A. I was forced across the road.

Mr. Knoblock: I object.

The Court: Tell what they did.

Q. That is a conclusion. Tell what was done.

123 A. · I was forced across the road. Mr. Knoblock: I object to it.

The Court: Tell what they did, instead of saying "be-

ing forced." Did they take hold of you?

A. They took hold of me, handled me on the hard road, pushed me over the guard rail 'way down into a culvert or ditch.

Q. Where is the culvert?

A. The culvert is on the south side of the road.

Q. How many were there then?

A. Well, I would say there was ten or twelve men altogether, roughly.

Q. What else did they do?

A. They beat on me and kicked—

Mr. Knoblock: Who? "They" should be designated.

The Court: If you know who it was that beat you, who was it?

- A. I can't exactly say who was doing the beating. I was protecting myself with my coat, and I peered at times and noticed these men around me, but I can not state their names.
- Q. Were these two you have identified and who stood up in the court room two of the men present? Were they present?

A. I am positive one of them was at the time.

Q. Which one?

A. McMullen.

Q. At the time you were being beaten up?

A. Yes, sir.

Q. Then what occurred after that?

A. I was pushed on into this culvert. Q. How deep was that culvert?

124 A. Oh, I would say five to six feet deep, somewhere in that neighborhood.

Q. All right!

A. And I attempted to get out of the culvert and I was pushed back in, and kicked along with it.

Q. Do you remember who was there?

- A. I am pretty sure there was one of the men, Mc-Mullen.
 - Q. Was it some of the men that were gathered there!

A. Yes, sir.

Q. Do you know what happened following that?

A. After being pushed back in the culvert, I made my way to the end of the culvert. I had taken my glasses off in protection for my eyes,—

Mr. Knoblock: We object to this.

The Court: It may stand, taking his glasses off.

A.—to save my own eyes, and then the procedure of being kicked while in the culvert, my glasses were throwed away by some means out of my hand. At the end of the culvert I was going to proceed through the culvert when faces showed up on the other end.

Q. Did you recognize any of the ones on the other end!

A. No, sir.

Q. Did you recognize any other persons than the two you have identified in the court room who were present that evening at any time during that occurrence?

A. I recognized three others. Q. What are their names? A. There was Causey.

Q. W. E. Causey?

- A. W. E. Causey and Carl Rosskamp and Walter Kohtz.
- 125 Q. Will these gentlemen stand up? (Persons named rise.) Are these three of the men that were there?

A. Those are the ones I recognized.

Q. These men that have stood up in the court room?

A. Yes.

Q. Were they or not in the gang out there-

Mr. Knoblock: I object to "gang."

Q. -in the group?

The Court: He may answer.

Q. Were all of these men in the group you have described there at the time of this occurrence?

A. All but one.

Q. Which one?

A. I don't think that We ter Kohtz was in the employ.

Q. Was what?

A. Walter Kohtz.
Q. Was he present with the rest of these men is what I am asking you.

A. Yes, sir.

Q. And at the time you were being assaulted?

A. Yes, sir.

Q. What did you do after that?

A. I became blinded while in the approach of this culvert with the snow, and I had slight scar on my nose that was bleeding, and the next thing that I knew I was being ordered into a car.

Q. What was said?

A. They says, "Get in that car."

2. Do you know who said it?

A. No, sir, I do not.

126 Q. None of these that were present?
A. I can not say as to who it was.

Q. Then what happened?

A. I was placed in a car and returned to the company property.

Q. And then what happened?

A. The police was ordered.
Q. Did you go any place from there?

- A. From the company property I was taken to the police station in East Peoria.
 - Q. And swore out a warrant?

A. Yes, sir.

Q. Will you give me the name of the man that was taking you in his car from the premises of the company to your home? You simply said "Thompson," I believe

A. Thompson.

Q. Do you know his full name? Herschel?

A. Herschel Thompson, I think, yes.

Q. Did he take you from the place where you were as saulted back to the company's premises?

A. That I don't know.

Q. You don't know who took you back?

A. I don't know.

Mr. Knoblock: I submit the question has been answered. The Court: Yes.

Q. What was your condition at that time?

A. Well, I was in pain from being beaten on and kicked, and rather shaky.

Q. Was that the reason you didn't know who took you back?

Mr. Knoblock: Just a minute! I don't see the materiality

127 The Court: He has answered. He said he didn't know.

Mr. Heyl: I didn't get the ruling:

The Court: He answered. He said he didn't know.

Q. Do you know a man by the name of C. L. Brown!

A. Yes, sir.

Q. Did you or not recognize him as one of the com-

A. No, sir.

Mr. Knoblock: I object to the form of the question.
Mr. Heyl: He said he didn't, so that is all there is to

Q. I will ask you if, on the following day, you were in the employ of the company?

A. No, sir.

Q. Were you on the 31st?

A. No, sir.

Q. Were you on any time after that?

A. Just partially one day.

Q. What day was that?

A. Yesterday.

Q. Well, prior to the time that you had this difficulty on Route 24 at the intersection of that road and the lane, did you have any difficulty with reference to your employment!

No. sir. A.

Were any stones thrown at you at any time?

A. There was coal thrown at me.

That is what I am trying to get at. When was that?

That day.

Q. That same day? Same day. A.

Q. That was December 30, 1941?

Yes, sir.

Mr. Knoblock: I move that be stricken. There is no proper foundation laid for that statement.

Mr. Heyl: I am going to get to it.

The Court: If you can, connect it up. Mr. Heyl: I will connect it up.

Where did that occur?

That occurred at the viaduct, or where the Nickel Plate crosses the T. P. & W.

Where, about, is that?

A., Well, I think it's Washington.

Is it the viaduct?

A. It's the 150 viaduct. The road that leads to Morton? Q.

A. Yes, off of 24.

Q. Commonly called 121

A.

I think so, yes, sir. It occurred near there?

Yes, sir, right below.

Q. What happened? Will you tell the court what happened !.

A. I was backing up into the yard—

What with?

-with a locomotive, peering back to notice the track and one thing or another, if it was all clear, and my face was, I would say, six inches from the cab when a hunk of coal splattered on the corner of the cab, and splattered in my face.

Q.\ Where did that coal come from?

A. It came from the north side of the track, opposite where the pickets were.

Q. Did you see some pickets there at that time? A. Yes.

Q. How many were there?

Mr. Knoblock: I move that this be stricken unless those pickets can be identified.

The Court: I think he may answer.

How many pickets were there?

A. Roughly, I would say five to six.

Q. Did you observe those pickets there before and after that day?

A. Yes.

Q. Were they there before this strike was called?

A. No, sir.

Q. Did you recognize any individuals in that group-

A. No, I didn't.

Q. - on that day, or any day?

A. No, I didn't.

Q. Did you recognize these men in any way as being formerly employees of this plaintiff?

Mr. Knoblock: Wait a minute! I object. He has answered he didn't recognize—

The Court: He said he didn't recognize any, but I think he can answer if there was any recognition that did convince him if there was any former employee.

A. I recognized that the majority of them were former

employees of the company.

Q. Was that true of the ones that constituted the picket line that day?

A. Yes, sir,

Mr. Knoblock: I object and move it be stricken, 130 that he recognized them as former employees. If he

didn't recognize any of them, I don't see how he could.

recognize them as former employees.

The Court: I think he meant he didn't know their names, but saw them working about the place. Is that about correct?

A. Yes, sir.

Q. I will ask you if the ones that were at the lane that you referred to in the occurrence of that evening also were former employees of the T. P. & W.?

A. Yes, sir, with the exception of Kohtz, that I don't

think was.

Q. Walter Kohtz?

A. Yes, sir.

Q. He was not an employee?

A. I don't think he was.

Q. At this occurrence at the viaduct, you were operating a locomotive engine, were you?

A. Yes, sir.

Q. Was there anything attached to it except the tender!

A. I think a tank car.

You were using that engine for the purpose of moving cars, were you not?

Yes, sir, returning to the yard.

Q. In connection with the business of the plaintiff?

Yes, sir.

Q. And where had you been?

I had been to the C. B. & Q. yard.

Where is that located?

That is down near Hiram Walker's at the foot of Persimmon Street.

Did you deliver some cars there? 131

We delivered some cars.

And were returning?

And were returning; had a message to pick up some . A. cars.

Were you backing? Q.

Yes. A.

Going north? Q.

No, backing east. A.

Q. East? Yes.

A: Were the cars that were delivered to the C. B. & Q. loaded or empty?

That I can not say.

Q. Can you tell us the name of the conductor or foreman handling these cars?

A. John Heilman.

Q. Now, I want to go back to the evening of that day at the intersection of the lane and the highway. Did these men that you have identified or any of those accompanying them at that time of that occurrence make any statements. to you of what they would do?

Throughout the-

Mr. Knoblock: I think these men should be identified. How can we deny that if we don't know who they are? The Court: Do you know who talked to you and what statements were made? And what statements?

A. I. know one man.

The Court: Who was it?
A. L. C. Totten.

Mr. Knoblock: Who? A. L. C. Totten.

When was that, and where?

That was while I was switching at the freight house.

Mr. Knoblock: I object.

Mr. Heyl: You have me confused now.

Q. I will go into that. What day was that at the freight house?

A. That was the first day of the strike.

Q. That would be Sunday, December 28 or 29? Monday, the 29th?

A. It would be Sunday. That was the first.

- Q. The strike was started on Sunday evening, December 28. When was it with reference to that?
 - A. It was on Monday, then; Monday. Q. Where and what time did this occur?
- A. I think it was around noon. I can't remember exactly the time of day.

Q. Where?

A. At the freight house?

Q. Where is the freight house?

A. The freight house is located on East Washington. I would say it was opposite the light plant in East Peoria.

Q. Tazewell County?
A. Tazewell County.

Q. Will you give us the name of this man Totten? Will you give us his given name?

A. Leo C.-Totten.

Q. He is one of the defendants in this case?

A: Yes, sir.

Q. Is he in the court room?

133 Mr. Knoblock: Will Mr. Totten stand up? (Person named rises.)

Q. Is that the gentleman?

A: That is the gentleman, yes.

Q. Tell the court what he said to you at that time and place.

A. Well, he swore at me.

Q. What did he say? There are various degrees of swearing, so we would like to have his words if you can give them.

A. If it is permissible.

The Court: What did he say?

A. He said, "You are a fine s. b." and in return I told him—I says, "It wasn't wrong in '29." He says, "No." I said, "There isn't—It isn't wrong now, is it?" and he put his head down, and never answered me.

Q. What else did he say?

A. I asked him-I said, "You can have this job." He

said, "I don't want it." I said, "What are you arguing for, then?" That is the only words that took place.

Q. Was there anything said later by him?

A. No, sir.

Q. Were there any others there at the time?

A. There was a man at the time.

Q. Do you know who he was?

A. His name is Dodson.

Mr. Elliott: Dodson in the room?

Q. Were there any statements made to you at any other time by any of the other defendants in this case?

A. There were various men that I know were employees

calling me names, dirty names.

134 Q. When and where were you?
A. I was in the cab of the engine.

Q. What day?

Mr. Knoblock: Wait a minute! Mr. Heyl; I will follow it up.

A: It was on both days, Monday and Tuesday.

Q. By "employees," whom do you mean!

A. Well, I have seen employees. There was Underwood and there was a man named Mack.

Q. What's Underwood's name?

A. Jerry Underwood.

Q. G. L. Underwood?

A. Yes, G. L.

Q. What was the other name?

A. John Mack.

Q. And where did you see these men?

A. In the car running parallel on the hard road.

Q. At what point?

A. It was on Washington Street east of where Martin's oil station is in Peoria—East Peoria.

Q. Were these men former employees of the T. P. & W.?

A. Yes, sir.

Q. What did they do? What did they say to you?

Mr. Knoblock: I object as having been asked and answered. He said they called names.

The Court: I don't think he said what was said.

What was said?

Q. Tell what was said. .

A. I can't say as to what they were saying. They 135 were hollering at me. One—I can remember the name "seab."

Mr. Knoblock: I object to the former testimony saying it was dirty names.

The Court: It may stand.

Q. Anything else!

A. No, sir.

Q. What were you doing?

A. I was going toward Peoria,

Q. With a locomotive?

A. With a locomotive.

Q. Did you have anything attached to the locomotive?

A. A caboose.

Q. And was that in the performance of your duties as an engineer for the plaintiff?

A. Yes.

Q. Which way were these men going?

A. Going toward Peoria. Q. Following the train?

A. Yes, parallel.

Q. How far did they follow?

A. That I can't say because my eyes was looking on the rail.

Q. Is C. L. Underwood in the court room? Or G. L. Underwood?

(Person named rises.) Is that the man?

A. That is the man, yes.

Mr. Heyl: I think you may cross examine...

The Court: We will take a recess for ten minutes. (Recess.)

The Court: You may proceed, Mr. Heyl.

Mr. Heyl: "I would like to ask a further question."

136 Mr. Mack and Mr. Dodson in the court room? Mr. Dodson? Mr. Mack?

That's all. Cross examine! The Court: Cross examine!

Cross-Examination by Mr. Knoblock.

Q. You say your name is Zeno F. Merrill?

A. Correct.

Q. And you are forty-two years of age?

A. Yes.

Q. And live at Rural Route number 6, East Peoria!

A. Yes.

Q. You have been employed by this plaintiff approximately how long, Mr. Merrill, would you say?

A. Since '22.

Q. And directing your attention to the 29th day of December, 1941, you knew on that day that a strike had been called previously by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, hadn't you?

A. Yes, sir.

Q. On that day you were a member of one of those organizations, weren't you?

A. Yes, sir.

Q: Which one?

- A. Brotherhood of Locomotive Firemen and Enginemen.
- Q. I see. Now, on the date of December 29, 1941, did you operate an engine that day?

A. 29th? What day is that, sir?

Q. Well, you have testified about it.

137 A. Well, that's on a Monday? Q. I think that's right.

A. Yes, sir.

Q. And I assume there were other members of the crew assisting you that day?

A. Yes, sir.

Q. Who were they?

A. They were Heilman,-

Q. Do you know where Heilman is from?

A. He lives in Peoria.

Q. He lives here in Peoria? In what capacity did he work that day?

A. Foreman.

Q. Who else was on that train?

A. Two boys by the name of Widmer.

Q. Widmer?

A. Widmer, I think, is their names.

Q. Where were they from?

A. Washington.

Q. Washington; Illinois?

A. I am pretty sure.

Q. Anyone else?

A. Fireman.

Q. What were the Widmers doing that day?

A. They were switchmen.

Q. They were switchmen? Both of them?

A. Yes, sir.

Q. Who else was on the train?

A. The fireman.

138 Q. What was his name? A. Hardy.

Q. Where is he from?
A. That I don't know.

Q. And who else was on the train? Anyone else?

A. A student was on.

Q. A student?

A: Yes.

Q. Is that the name of the man?

A. He was a student fireman.

Q. He was a student fireman? That was his work that day?

A. -Yes.

Q. Do you know what class of work they were in prior to this occasion?

A. The fireman and the men that were acting as switchmen were from the repair track.

Q. From the repair track of what road?

A. T. P. & W.

Q. Mr. Merrill, how much of a bonus were you paid by the plaintiff to work on that date?

A. · No bonus.

Q. No bonus at all?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. You weren't promised \$10.00 a day extra, were you?

A. No, sir.

Q. Now, when you left the plaintiff's premises on the evening of December 29, 1941, did I understand you to 139 say that you asked someone to take you home?

A. Yes, sir.

Q Do you know whether the other men that worked with you that day also asked someone to take them home?

A. No, sir.

Q. But you did?

A. I did. .

Q. As far as you know, no one did take the other members of your train crew home that day, did they?

A. No, sir, not as far as I know.

Q. Then you got into Herschel Thompson's car, is that correct?

A. Yes, sir.

Q. Where did you get into his car?

A. At the round house.

Q. Describe the location of that house to us as well as you can, will you?

A. Like in East Peoria?

Q. Yes, with reference, say, to the lane that runs south-

erly off of hard road number 24.

A. Off of Route 24 you would go south a good block, cross the Nickel Plate tracks and turn left, and go approximately a block east.

). Altogether it's approximately two blocks from the

hard road?

A. Two good blocks from the hard road.

Q. About what time did you get into Mr. Thompson's car on that night?

A. About 5:45.

Q. About 5:45?

A. Yes.

Q. Was it dark then?

A. Yes, sir.

140. Q. What kind of a car did Mr. Thompson have?
A. I think a Ford two-door. I am not positive of the make, but it was a two-door.

Q. Commonly called a coach, is that right?

A. A coach, yes, sir.

Q. Where were you sitting in that car?

A. In the back seat.

Q. You were— Were you sitting on the seat or on the floor?

A. I was laying down on the edge of the seat.

Q. And you remained in that position until sometime after the accident, is that right?

A. Well, right to the accident, when I rose to find out

what had happened.

Q. Now, have you read the complaint filed in this case by the plaintiff?

A. Have Fread what?

Q. Have you read the document we call a complaint filed in this case by the plaintiff?

A. In the newspaper?

Q. Oh, no! I mean the document that was filed with the Clerk of this court.

A. No, sir.

Q. Have you seen a copy of it?

A. No. sir.

Q. You have not?

A. No, sir.

Q. You made an affidavit concerning the activities on the evening of December 29, 1941, didn't you?

A. Yes, sir.

141 Q. You made and gave it to one John H. Royster, didn't you?

A. Yes, sir.

Q. He is connected in a legal way with Mr. Heyl, the attorney?

A. I guess he is. I can't say as to that.

Q. I assume that when you made that affidavit and gave it to Mr. Royster, that the things you made in that affidavit and stated in there were true and correct?

A. Yes, sir, to the best of my ability.

Q. And you were placed under oath by Mr. Roysfer at that time, weren't you?

A. Yes, sir.

Q. As I understand you to say here today, the car in which you were riding, being driven by Herschel Thompson on this evening of December 29, 1941; came to a stop after entering upon the hard road due to an accident with another truck, is that right? Or with a truck, is that right?

A. Yes, sir.

Q. And the car of Herschel Thompson, after it came to a stop that night was it stopped by reason of any interference from the pickets? Is that true?

A. To the best of my ability, it wasn't.

Q. It was not, and as far as you know any allegation that may be contained in the complaint sworn to by Mr. McNear, saying Herschel Thompson was interfered with by pickets and stopped is erroneous?

Mr. Heyl: I object to that question; too general.

The Court: Yes. The pleading will state for itself.

Mr. Knoblock: Very well, Your Honor. I will with draw the question.

142 Q. There was nothing there you observed, and as far as your knowledge goes, that resulted in the stopping of Herschel Thompson's car that had anything to do with the activities of the pickets, isn't that true?

A. No, sir.

- Q. And the car was stopped by Herschel Thompson after he had gone on some short space beyond the picket line?
- A. Yes, just a few feet. He pulled away to avoid a traffic jam.

Q. I see. Now, you say that while you were lying down in the rear seat of the car of Herschel Thompson that men came to both sides of the Thompson car, is that correct?

A. I wasn't lying down. I arose.

Q. You were sitting up at that time?

A. At the time of the crash—Q. To see what happened?

A. What happened, yes, sir.

Q. After the car was brought to a stop by Herschel Thompson, was it on the north shoulder?

A. Yes.

Q. What direction was it headed?

A. West.

Q. It was parked near what is commonly known as the cemetery lane?

A. Yes, sir, midway between the cemetery lane and

the T. P. & W. lane.

Q. And the other vehicle with which Herschel Thompson had an accident was brought to a stop?

A. Yes, sir.

Q. And it was taken to the north shoulder of the road, too?

A. To the best of my ability, yes.

143 Q. Do you know what kind of a vehicle it was?

An automobile or a truck?

A. I don't know other than it was green.

Q. How far was the truck and automobile in which you were sitting apart after they game to a stop?

A. Well, it was a very short distance.

Q. What is your best judgment?

A. I would say maybe from the impact a foot or so.

Q. The truck and the automobile of Herschel Thompson were within one foot of touching one another?

A. Yes, sir.

Q. Was the truck later moved off the road?

A. Yes, sir.

Q. About how far was the truck off the road?

A. It was moved to the rear of me, and I can't say.

Q. You have no knowledge?

A. I have no knowledge of the distance.

Q. But Mr. Thompson went to where the truck had been moved after the accident in order to have his conversation concerning the accident, isn't that right?

A. To the best of my ability he did, yes.

Q. Now, you say after the Thompson car came to a

stop there were men that came to both sides of the Thompson car, is that correct?

A. Yes, sir.

Q. Who were those men?

A. I only know the two, Mr. Todd and McMullen.

Q. Which side of the car were they on?

A. On the left hand side.

Q. And that would be the side that had been hit in the accident?

144 A. Yes, sir.

Q. And there was some damage to that side of the car, isn't that right?

A. Yes, sir.

Q. Do you know who opened that door?

A. I am not positive, no.

Q. I see. Now, you say someone ordered you out of the car. Do you know who it was?

A. I remember of Todd, seeing him, telling me to get out of that car.

Q. I see. Anyone else?

A. Well, at that time there was several men, through the window.

Q. Do you know their names?

A. I don't know them.

Q. You don't know their names?'

A. No, not positive.

Q. Now, when the left door of this Thompson car was opened you got out of the car under your own power, didn't you?

A. Yes, sir.

Q. And you got out in a hurry, didn't you?

- A. Well, not extraordinarily in a hurry. I stepped out like I ordinarily would.
- Q. When you stepped out of that car, you didn't have your fists doubled and your arms swinging, did you?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. And you thereafter say that certain parties there proceeded to manhandle you, as I recall it. Is that what you said?

145 A. Yes, sir.

Q. Who were they?

A. Well, these men, as I say, I cannot say who were doing the heating other than I know I saw McMullen.

Q. McMullen is one , ou know beat you that evening, is that right?

A. Yes, sir.

O. Did he have a club in his hand?

No. sir.

Q. Do you know anyone else that beat you there that evening? Name?

A. No, sir.

Q. You couldn't place the name of any one single individual other than McMullen as having struck you or assaulted you there on that evening, is that right?

A. Not by name, no, sir.

Q. I see. You never saw C. L. Brown there that evening at all?

A. No. sir.

Q. But within an hour after this assault you went to the city hall in East Peoria, didn't you, and you swore out a warrant for assault and battery against C. L. Brown and W. E. Causey, didn't you?

A. Yes.

Q. If you didn't know they beat you, how did you swear out that warrant?

A. I told the police those faces were there in my im-

mediate surroundings.

Q. And you swore out a warrant for assault and battery against Causey and Brown when you didn't know whether they had taken part in that assault or not, didn't you?

Mr. Heyl: I object because they were as guilty as

146 the men who did the beating.

The Court: I don't think this court is much concerned with the warrants issued down there, except to test this man's credibility. I think he may answer. Read the last question.

(Question read by reporter.)

Mr. Heyl: I want to make a further objection that question is argumentative, and it is not proper cross examination. As to why he did it, the facts there ought to speak, and not his conclusion.

The Court: I can't see that it has much materiality, but

he may answer.

Did you swear out a warrant?

A. Yes, sir.

Q. Didn't I understand you to say on direct examination you didn't recall C. L. Brown being there at all?

A. Yes, sir.

Q. Yet vou swore out a warrant for him?

A. Jo as I get it.

Q. You dn't have any knowledge of his being there at all?

A. No.

Q. Carl Rosskamp you mentioned as being there that evening?

A. I did.

Q. You are sure of that?

A. I saw him.

Q. You saw him when you claim this assault took place?

A. Yes, sir.

Q. As a matter of fact, Merrill, isn't it a fact you didn't see Rosskamp there until you came back from 147 the T. P. & W. round house that evening, and Rosskamp was never there when you claim this assault took place? Isn't that a fact?

A. I saw his face.

Q. Later?

A. In the picket line.

Q. Later?

A. After I was brought from the four mouse.

Q. And you don't know whether he was there when the assault took place?

A. When this manhandling was going on.

Q. You are sure?

A: I am sure of that.

Q. You had a slight scar on the nose, is that right?

A. Yes, sir.

Q. When you got down to this ditch that you describe, you started toward a culvert, didn't you?

A. Yes, sir.

Q. As a matter of fact, without anyone being near you you ran into the culvert all by yourself?

A. Yes, sir.

- Q. And it hurt you, too, didn't it? You hit it pretty hard?
- A. I didn't run into the culvert. I ducked under the culvert.
- Q. Now, you tell about on December 30 about a coal-throwing incident.

A. Yes, sir.

Mr. Heyl: I didn't get that.

Mr. Knoblock: Coal-throwing incident.

Q. When and where did that take place?

A. That took place below the viaduct near the 148 junction of the Nickel Plate Road and the T. P. & W.

Q. And you didn't see who threw that coal, did you?

A. No, I didn't see it.

Q. And it came from the opposite side of where-the pickets were? Is that what you told us a while ago?

A. It came from the side the pickets were on.

Q. You don't know whether they threw it or not?

A. I glanced afterwards, and there was no nien except at that picket post.

Q. You didn't see them?

A. No, I didn't see them.

Q. You don't know if anybody else threw if or not?

A. No, I didn't see them.

Q. I understand that you had a conversation with Leo-C. Totten at the freight house on Monday, December 29, 1941, is that right?

A. Yes, sir.

Q. And that was about noon?

A. Around noon, to the best of my knowledge.

Q. And you think that he said to you the first thing he said, "You are a fine s. b.," isn't that right?

A. Yes, sir.

Q. Besides that, he said nothing other than, "I don't want your job"?

A. Yes.

Q. That is all he said? Those were the only words he said on that occasion?

A. That is all he said. The rest was in nodding.

Q. You have mentioned a man by the name of Dodson. He was with him?

149 A. Yes, sir.

Q. Do you know where Mr. Dodson is?

A. Do I know where he is?

Q. Yes.

A. No, sir.

Q. Do you know his first name?

A. All I have heard him called is "Biddy." I don't suppose that is his first name. I don't suppose that is rightfully his first name.

Q. You spoke of an occasion on Monday and Tuesday when you were in the cab of the engine on Washington

Street east of where the Martin oil station is in East Peoria. You say Jerry Underwood, or G. Underwood, and John Mack yelling at you, is that right?

A. · Yes.

Q. The only name that you heard them say is "scab," is that right?

A. Yes, sir.

Q. They said nothing else that you heard?

A. That I heard, no.

Q. And what else they may have said, you don't know, do you?

A. I don't know.

Q. That was the sole thing that occurred on that occa-

A. That is all I heard. Their mouth was going.

Q. All that happened? On December 30 you were running an engine on that date?

A. Yes, sir.

Q. Who was with you as members of the crew! Who was the fireman?

A. Same fireman.

Q. Same? How about the switchmen!

150 A. Same switchmen.

Q. What was that, now? I didn't get that.

A. The same switchmen.

Q. And how about Mr. Heilman? Was he with you that day, too?

A. Yes,

Q. What work did he do prior to these dates? A. He was yardmaster and chief dispatcher.

Q. For the T. P. & W.?

A. Yes, sir.

Q. Who was your crew on the 31st?

A. I didn't work the 31st.

Q. You did not work the 31st?

A. No.

Q. Did you say you worked yesterday?

A. Yes, sir.

Q. In what capacity?

A. As an engineer. Well, you would call it an engineer: yes, sir.

Q. Who was your fireman?

A. McCahey.

Q. Where is he from?

A. That I don't know.

Q. How long had he been employed?

Mr. Meyl: I object as not cross examination, immaterial whether he worked vesterday.

The Court: Objection sustained.

Q/t Now, referring to your affidavit that you say you gave Mr. Royster in regard to the happening on December 30, 1941, between 5:30 and 6 o'clock, I haven't heard you say here—I will ask you if you did not say this, or this

151 in substance: "At least one of the men that were beating on me had a club"? Did you or not make that

statement to Mr. Royster?

Mr. Heyl: Let's follow the rule, and show him the

The Court: The form of the question isn't proper.' If it is for impeachment,—

Mr. Heyl: I object to it.

The Court: He has a right to ask if anybody did use a club.

Q. Did anyone use a club that night?

A. Not to my knowledge. Mr. Knoblock: That's all.

The Court: Anything further with this witness.

Mr. Heyl: Yes.

Redirect Examination by Mr. Heyl.

Q. In your direct examination, you referred to a statement of Mr. Totten with reference to 1929, and \I don't believe that is clear in the record. What was that statement?

Mr. Knoblock: I think that is—We object.

The Court: What is the purpose?

Mr. Heyl: I want to ask it as a direct question.

The Court: Will you read the question?

(Question read by reporter.)
The Court: Referring to 1929?

Mr. Knoblock: Yes. That was definitely in the record, and the only purpose is repetition.

The Court: It won't hurt anything as long as we

152 don't have a jury.

What was the statement about 1929?

A. I asked him if it wasn't wrong in 1929,— The Court: You have made that statement. .

Mr. Knoblock: That is what I am objecting to.

Let the court rule on it.

The Court: Objection sustained:

What did 1929 refer to?

Mr. Knoblock: I object to that. I haven't gone into that.

The Court: Objection sustained. We all know what it refers to.

Go ahead.

Do I understand you that this coal-throwing incident happened on Monday, the 29th, and the assault on Tuesday the 30th? Are those the correct dates?

A. I rather think it was on the 30th, on the day of the

assault, about the coal-throwing.

Q. The same day.

A. · Yes.

And that was the date of the assault?

Yes, sir.

Tuesday? Q.

Yes, sir.

Mr. Heyl: That's all.

The Court: Anything further?

I think we had just as well stop at this point.

We will start at 9:30 in the morning.

Mr. Heyl: We can be ready at 9.

The Court: 9 will be all right with me. Is that 153 satisfactory?

Mr. Knoblock: I have some work.

(Discussion off the record.)

Trial adjourned at 12 o'clock noon.

January 9, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

HERSGHEL THOMPSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

(). What is your name?

Herschel Thompson.

Q. How old are you? Forty-six:

Where do you reside?

Q. A. 300 Arnold Street, East Peoria.

And what is your business or occupation?

Special agent, T. P. & W. A.

Q. And how long have you been employed as a special agent?

A. Oh, around thirteen or fourteen months.

Q. And have you been employed continually-154 for that period of time?

Mr. Knoblock: I can't hear you.

Now, were you in the line of your employment on or about December 30, 1941, in the yards of the plaintiff?

Yes, sir.

And are you acquainted with Zeno Merrill, who Q. testified in this case?

A. I know him when I saw him,

Q. And on that date, did you or not take Mr. Merrill in your car to his home, or start to his home?

A. Yes, sir.

.Q. About what time of day was that?

A. Oh, it was around 6 o'clock, somewhere along there.

 Q. And prior to the time you took him in your car, did you observe anyone in the lane leading from the hard road to the premises of the plaintiff?

A. Yes, sir.

Q. What did you observe?

A. A bunch of pickets out there.

I couldn't hear that.

A. A bunch of pickets out by the gate.

Q. How many were there? A. Thirty-five or forty.

Q. Were they armed with anything?

Some of them had clubs. A.

Q. And where were they stationed?

Right at the entrance to the hard road where it goes down to the lane.

Q. Had you passed into that lane from the hard road before on that day?

Yes, sir.

What did you observe with reference to the action of the pickets when you, attempted to drive into the lane?

A. They never bothered me, just stopped everybody that goes in.

Q. After you took Merrill in your car, what did you do!

A. Well, I went over to the round house and took himstarted to take him out. It was slick that evening, and a car hit me, a little truck, when I pulled across the hard road.

Q. Had an accident?

A. Had an accident.
Q. When you came to the hard road, is that it?

A. Yes.

Q. Where did you pull your car?

A. To the entrance to Fon du Lac Cemetery.

Q. How long is that intersection from the hard road!

A. About three-quarters of a block.

Q. What did you do?

A. Went back to where the truck had hit me, and gave him my license number.

Q. Where was the truck?

A. East of the lane.

Q. About how far were the vehicles apart?

A. Oh, about three-quarters of a block. .

Q. Then what happened after that?

A. I heard a noise up there where my car was, and looked around, and there was a couple of fellows up there, and they had him out of the car.

156 Q. Whom do you mean by "him"?

A. Mr. Merrill.

Q. Did you return to the car?

A. Yes, sir.

Q. What did you observe?

A. They had him running around all over the read

trying to beat him up, across the road.

Q. Did you recognize the two men that you say were there when you looked back from where you were standing by the truck?

A. I knew one of them.

Q. What was his name?

A. McMullen.

Q. Is that one of the defendants in this case?

A. Yes, sir.

Q. Walter McMullen?

A: Yes, sir.

Q. Then did you go back near your car?

A. Yes, sir.

Q. Just tell from the time you went back there until

this transaction had ended what occurred. Just tell the

court the whole story.

A. They had him out of the car, hitting him around there, and he was across the road, back and across the road, and then they got him across the fence and beat him up a little and in the ditch, and from there I went to get some help, and when I came back it was mostly quieted down, and he was down by my car.

Q. Did you recognize any of the other persons that

were engaged in that transaction!

A. Brown, he is the only guy, Clarence Brown. I get hold of his arm and tried to get him off of him.

157 Q. C. L. Brown?

A. Yes.

Q. What was he doing?

A. Hitting him.

A. His fist.

Q. What part of his body?

A. He had his back to him, and he was hitting him on the head.

Q. What did you do?

A. Tried to pull him off.

Q. Did you succeed?

A. You couldn't, with a bunch of guys around there.

Q. Did you recognize any of the others around there!

A. No. I didn't.

Q. Do you know Mr. C. L. Brown?

A. Yes, sir.

Mr. Heyl: Will you stand up! (Person named rises.)

A. Yes; sir.

Q. Is that the geneltman who just stood up in the court room?

A. Yes, sir.

Q. What did you do?

A. I went down to the special agents' office and got Mr. Kipling.

Q. And what did you do then?

A... He come back up there, and it was about all over with them.

Q. Did you recognize any of the other persons that were present there at any time?

Mr. Knoblock: I object to that. It has been asked and

answered. He said he didn't, that these were the only two he knew.

158 The Court: I think he may answer if he did recognize anyone else.

A. Oh, yes.

Q. Who were they?

A. Mr. Causey was there.

Q. W. E. Causey, one of the defendants?

A. Yes, sir.

Mr. Heyl: Mr. Causey, will you stand up if you are in the court room? (Person named rises.)

A. Yes, sir.

Q. Is that the gentleman?

A. Yes, sir.

Q. Who else?

A. Gibbons was there.

Q. What was the name?

A. Gibbons.

Mr. Heyl: Is Mr. Gibbons in the court room?

Q. Did you observe Rosskamp or Kohtz?

Mr. Knoblock: I object to the leading form of the question, trying to put the words in his mouth.

The Court: I think he may answer.

Was he there?

A. Yes, sir.

Q. The two of them?

A. Yes, sir.

Q. Anyone else?

A. Underwood.

Q. Kohtz, you say, is the other one?

A. Yes, and Underwood, too, Jerry Underwood.

159 Q: Mr. Kohtz and Mr. Underwood?

A. Yes.

Mr. Heyl: And Mr. Rosskamp,—will they stand up! (Persons named rise.)

A. That isn't the Kohtz that was there. It is his brother.

Q. Is the brother here? What is his name? Do you know his first name?

A. No, I don't.

Q. This is Walter Kohtz, is it?

Mr. Elliott: Is your name Walter Kohtz?

Mr. Kohtz: That's right.

Q. Now, when you came up to the intersection of this

highway with Mr. Merrill, where were these men pickets standing?

A. On both sides of the lane."

Q. And where, with reference to the hard road?

A. Right beside the hard road.

Q. About how many were there?

A. Thirty-five or forty of them.

Q. And what is the size of that lane? What is the width of it?

A. Oh, I don't know exactly what it is, but I rather imagine it's about twelve feet.

Q. Did you observe this truck approaching as you approached there?

A. It was a block and a half away, at the brink of the hill.

Q. Was your view obstructed in any way?

A. There was a few pickets there; couldn't see so good.

Q. Now, after you returned with Mr. Kipling from the round house to the point where Merrill was located, did you observe any marks on Merrill's face or body?

A. Not at the time.

160 Q. Did you at any time?

A. Yes, sir.

Q. What did you observe?

A. He had a mark across where his glasses was on his nose.

Q. What was the character of that?

A. Just where his glasses—the ridge across there was into his face a little bit, into his nose.

Q. And did he have his glasses?

A. No, sir.

Q. Did he have glasses on when you took him up there?

A. Yes, sir.

Q. Now, Mr. Thompson, can you relate any other fact with reference to this strike?

A. What's that?

Q. Did you have any difficulty in connection with any train at any other time?

A. Yes, sir.

Q. Where?

A. On the road down—I went down to the junction, the P. & P. U. junction.

Q. When?

Mr. Knoblock: Where is this?

A. P. & P. U. junction.

Mr. Knoblock: Where have you designated that in the complaint here? Anything that is not referred to in the complaint I am going to object to any examination on.

Mr. Heyl: It is referred to.

Mr. Knoblock: Show me where it is.

Q. Where is the P. & P. U. junction?

A. Down on the four corners where you turn to go to Metamora. I don't know what street it is on.

Q. Main Street in East Peoria, is that where it is!

A. Yes.

Mr. Knoblock: There is no charge about anything like that in the complaint. We are objecting to it.

Mr. Elliott: We charge interfering with the trains in

East Peoria.

Mr. Knoblock: We absolutely object to anything that is not charged in the complaint.

The Court: We seem to be in disagreement. Is there

anything charged?

Mr. Heyl: There is a charge of interference with trains passing from the yards in Peoria to East Peoria, where the trains pass.

The Court: Just read it to me, if you will, please.

Mr. Elliott: Paragraph 37.

Mr. Knoblock: What page is that on?

Mr. Ellioft: That is on page 18 (reading same).

The Court: I think he may answer.
Mr. Heyl: Read the question.

Mr. Knoblock: If this is going to be with reference to the crossing of the T. P. & W. and Nickel Plate Railfoad and various other points, I submit that is too general. We wouldn't be in position to defend against that. It lets them take hundreds of miles of road and declare anything.

The Court: I don't think in a case of this sort it will hurt to introduce evidence which will not be proper.

162 which may be stricken at the conclusion. I can't tell now whether that is a reference to the particular charge in the complaint or not. I would be glad to listen to you at the conclusion and, if it is improper, it may be stricken. It is quite different than trying it before a jury.

Mr. Knoblock: That's right. The Court: We can do that.

Read the question. ...

(Question and answer read by reporter.)

Mr. Knoblock: Will you read that again?
(Two preceding questions and answers read by reporter.)

The Court: 'Go ahead, gentlemen!

Q. And is that road to Metamora what is commonly known, or generally known, as the "Caterpillar Trail"?

A. Yes, sir.

Q. And it intersects with highway number 24 at that point?

A. Yes, sir.

Q. And the Caterpillar Trail extends across the railway and Farm Creek and the bridge into the City of East Peoria,—

A. Yes, sir.

Q. -is that right?

A. Yes, sir. a

Q. Now, having that place in mind, will you state to the court where this incident occurred that you referred to a moment ago?

A. I was called up to come down to the P. & P. U.

junction by Mr. Heilman.

163 Q. Where is the P. & P. U. junction with reference to the intersection that I have referred to?

A. Well, it's about twenty five or thirty feet off the

hard road to the left.

Mr. Knoblock: We wish to object to this, and move it be stricken, on the ground there is no allegation of this oscasion in the complaint, and we are taken by surprise, improper and immaterial.

The Court: The objection will be overruled.

Let the record show counsel objects to all questions pertaining to this particular location.

Go ahead!

Q. Now, will you give us the date and the time that this occurred?

A: Well, I don't know the date or-

Q. Do you know the day, about? What day of the week it was? When was it, if you know; with reference to New Year's Day?

A. Gosh, I don't know the day. I don't remember the

Q. Was it one of the days last week?

A. Yes, sir.

Q. About what time of day was it?

A. Around 3 o'clock in the afternoon.

Q. Now, will you tell what occurred at that place?

A. Well, there was nothing occurred there. They called me to come down there, and 70 was down there, the switch engine, and it wasn't down there; over on Washington Street sitting there.

Q. Washington in what place?

A. East Peoria.

Q. What did you do?

A. Got on the engine.

164 Q. Did you go over to Washington Street?
A. I went over to Washington Street.

Mr. Knoblock: I object.

Q. Where was it on Washington Street? Can you tell where it was?

A. Right at the crossing where you come out of the P. & P. U. "hump" or railroad.

Q. Where is that?

A. On West Washington Street.

Q. Is this where the road crosses Washington Street! Can't you tell where that train was at that time, and where it was located with reference to East Peoria?

A. Well, I am not well acquainted with Peoria and

East Peoria like some people.

Q. Was it near the river bridge?

Mr. Knoblock: I object.

The Court: Let's get along.

Do you know where this place was we are talking about!

A. Yes, sir.

The Court: Where was it?

A. Where you come out of the route of the P. & P. U. on Washington Street.

The Court: Where you come out on Washington Street!

A. Yes, sir, the crossing.

Q. Is that the road that passes the Caterpillar Tractor Co.?

A. Yes.

Q. And goes out through East Peoria?

A. Yes, sir.

Q. Where was that train with reference to that crossing?

Q. And the road there runs in what direction?

A. It runs off north.

Q. Northerly and southerly direction?

A. Northwest, northeast.

Q. What did you do when you got there? What did you find?

A. There was nobody around there only a couple of

guys up to the crossing.

Q. What did you do?

A. Got on the engine, and told them to go on. We went over to the P. & P. U. junction and got the cut of cars, and started over to East Peoria.

Q. Then what occurred?

A. We got around the spillway on 24, and they commenced throwing rocks at us.

Mr, Knoblock: Wait! Who?

Mr. Heyl: I will show who it was.

Mr. Knoblock: Where the spillway was?

A. Yes, sir.

Q. Is that in Tazewell County or Peoria County, the spillway?

A. Tazewell County.

Q. Where is it with reference to East Peoria?

A. It's on Route-

Q. It's in East Peoria, is it?

A. Yes, sir.

Q. And where is it with reference to the Caterpillar Tractor plant?

A. Right along the side of it.

Q. And near the Caterpillar Trail?

A. Yes, sir.

166 Q. Now, did you recognize any of the persons there?

A. Yes, sir.

Q. Who were they?

A. Wilson,-

Q. What is his first name, if you know?

A. I don't know his first name.

Q. Who else?

A. Jerry Underwood.

Q. Who else!

A. Rosskamp. Q. What is the name?

A. Rosskamp.

Q. All right!

A. And Gibbons.

Q. All right!

A. St. Clair. That's all that I remember or recognized.

Q. What did they do?

A. We was going down along there, and they commenced throwing rocks, rocked us, knocked the cab windows out, and we kept on going.

Q. Were there any other men there?

A. Yes, sir.

Q. Who were they?

A. I don't know who they were.

Q. Did you recognize— A. All of those I told you.

Q. Was there any damage to the train?

A. Yes, sir, they broke the window lights out.

Q. Where?

167 A. On the cab of the engine.

Q. Were there any other men on the train besides yourself?

A. Six or seven fellows in there.

Q. Where were they?

A. In the cab of the engine.

Q. Where were you?

A. In the cab of the engine.

Q. Did the engine have a train of cars attached to it!

A. Yes, sir.

Q. And where were you taking the cars?

A. Over to the "Q" old house track.

Q. In Peoria?

A. Yes, sir.

Q. Did you proceed to that point?

A. Finally we did. We were stopped again down by the bridge.

Q. Where were you stopped?

A. Before we crossed the bridge.

Q. Before you crossed the bridge? A. Before we crossed the bridge.

Q. Did you recognize any of the persons there?

A. Same fellows.

Q. Any others?

A. No, sir.

Q. What happened there?

Mr. Knoblock: I didn't get this second occasion.

What was that description?

The Court: Down by the bridge, as I understood it.

A. We were stopped before we crossed over the bridge.

Mr. Heyl: He stated the river bridge.

168 The Court: Go ahead!

Q. Is this near the Illinois River bridge?

A. Yes, sir.

Q. Where, with reference to the intersection of the railroau and West Washington Street?

A. Right by it, right were you cross over.

Q. How far from the bridge?

A. Oh, about twenty-five or thirty feet from the bridge before you cross over.

2. Tell what happened there.

A. We were rocked again. They commenced throwing the rocks, and all of the guys got out of the cab and left, all of the fellows in the cab.

Q. Where did they go?

A. I don't know where they went.

Q. Where did you go?

A. Went over to telephone, and reported it.

Q. Whom did you call?
A. I called the yard office.

Q. And was the engine abandoned then?

A. Yes, sir.

Q. Will you tell the court the names of the persons that threw rocks at that point?

A. Well, Mr. Wilson, Underwood and Rosskamp. That is the only fellows I saw there throwing rocks.

Q. Then what happened following your telephone call?

A. I come back to the engine, and pretty soon the engineer drifted back and one of the firemen.

Q. Who was the engineer?

169 A. I don't know his name. He is a stranger to me.

Q. Did you know the firemen?

A. No, sir, I didn't know any of them in the eab except Heilman.

Q. I didn't get-

A. Mr. Heilman is the only man I knew in the cab.

Q. In the engine cab?

A. Yes, sir.

Q. What happened following that?

A. They said the water was low in the engine, so when he come back he put some more water, and Mr. McNear come over, and I and him rode the head of the engine over the bridge.

Q. Into Peoria?

A. Into Peoria.

Q. Who accompanied that train across the river besides yourself and Mr. McNear?

A. One of the firemen.

Q. Did you run the engine?

A. No, sir.

Q. Who did?

A. The engineer.

Q. Was that Heilman?

A. No, sir.

Q. You can't give us his name?

A. No, he is a stranger to me.

- Q. Did anything else occur to that train either in the yard where you first saw it, or at the spillway near the bridge?
- A. Near the bridge they pulled air on us at the bridge and stopped us.

Q. What do you mean by that?

170 A. Shut the air off. Q. Who did that?

A. I didn't know who did that. They were throwing rocks, and we were down in the cab to keep from getting hit.

Q. When did it occur with reference to the time the rocks were being thrown?

A. Same time.

Q. Will you tell the court what was done? What mechanical operation took place to stop the train?

A. They pulled the air on the train, and that stops the

trains. They can't move it.

Q. You saw it?

A. No, sir.

Q. Did you examine it later?

Mr. Knoblock: I object and move-

A. Yes.

Q. What did you find?

A. The angle cock was pulled on it.

Q. Where is that angle cock?

A. Where the coupling is.

Q. On what? A. On the car.

Q. How many cars were in that train?

A. I rather imagine seven or eight. ..

Q. Now, Mr. Wilson and Mr. Rosskamp and Gibbons and Underwood, you identified them?

A. Wilson back at the back, Underwood and Mr. Ross

kamp.

Q. Did you recognize any of the other persons present either by name or former employment?

71 A. I just know them by employment.

Q. Were they or not former employees of the plaintiff in this case?

A. Yes, sir.

Mr. Knoblock: I object to that, and move it be stricken. There is no way defendants can answer anything like that.

The Court: I think he has a right to say they were former employees, but he didn't know their names. Is that right?

A. Yes, sir.

The Court: Go ahead!

Q. I will ask you if you observed any persons in an automobile near the train when it was on West Washington Street near the Illinois River bridge?

A. Yes, sir.

Q. Did you observe the number, the license number of that automobile?

A. No, sir.

Q. Did you notice anyone in the car?

A. Yes.

Q. Who was in the car?

A. There was two ladies and a man.

Q. Did you identify the man?

A. Yes, sir.

Q. Who was it?

A. Mack.

Q .- J. L. Mack?

A. Yes, sir.

Mr. Heyl: Is Mr. Mack in the court room! J. L. Mack!

172 'Mr. Knoblock: He is not a defendant,

Q. Was he a former employee of the T. P. & W.?

A. Yes, sir.

Q: Do you know what line of work he followed?

A. He was a fireman.

Mr. Knoblock: I object to this line of interrogation as to Mack because he is not a defendant.

The Court: I think the objection will be sustained, and the answer may be stricken.

Q. Did you recognize anyone else in the car?

A. Two ladies is all.

Mr. Hevl: That's all. Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Thompson, you say that you have been employed by the T. P. & W. as special agent for thirteen or fourteen months?

A. Yes, sir.

Q. And your direct superior while in this employment has been Mr. Kipling, is that right?

A. Yes, sir.

Q. Now, on December 30, 1941, you say about 6 P. M. you took Mr. Merrill in your car from the roundhouse there in the T. P. & W. yards, is that right?

A. Yes, sir.

Q. As you started out with Mr. Merrill in your car, where did he sit in the car?

A. What?

Q. Where did he sit? Front or back seat?

A. He was in the back seat.

- 173 · Q. Was there anybody else in the car with you!
 A. No. sir.
- Q. Was there anybody else occupying the right front seat of your car?

A. No, sir.

Q. What type of car did you have?

A. '41 V-8.

Q. How many doors did it have?

A. Two.

Q. Now, the fact of the matter is, when Mr. Merrill began riding in your car he was lying down on the back seat or floor of the car, wasn't he?

A. No. sir.

Q. He was sitting up, was he?

A. Yes:

Q. He was sitting up at all times?

A. When I left there he was.

Q. He was sitting up as you drove through the picket line and to the hard road?

A. Yes, sir.

Q. He sat up all the way from the roundhouse to the scene of the accident?

A: Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. You never had any trouble getting through that picket line, did you?

A. No, sir.

Q. They never bothered you in any way, did they?

174 A. No, sir.

Q. On this particular evening, the only reason that you stopped your automobile there on that occasion on the evening of December 30, 1941, is because of the accident?

A. Everybody stops that goes out of there.

Q. I understand that, but when you got on the hard road you never stopped your car because of any activity or interference by the pickets? You stopped it because of the accident?

A. Yes, sir.

Q. Any charge that may be made that the pickets stopped you that night or interfered with the passage of your car is not true?

Mr. Heyl: I object to the form of that question.

The Court: Yes, he has answered:

Q. The pickets had fires burning there during the day and evening during picket duty, isn't that right?

A. Yes, sir.

Q. And the main source of heat there was from wood, sticks and things of that kind, isn't that right?

A. Yes, sir.

Q. And these pickets (you observed them, in fact) used sticks and clubs to punch wood on the fire and stir it up? You saw them do that?

A. They put some in the fire.

Q. After the accident, you left Mr. Merrill sitting up in the rear seat of your car, and you walked in the general direction known as easterly on the hard road to this truck, is that right?

A. Yes. -

Q. You say that was about three-quarters of a block from where your car was stanting?

175 A. Yes, sir.

Q. It was dark that night except for the light from the bonfire the pickets were around?

A. We have another light on the pole.

Q. That light wasn't burning that night? Isn't that right, Mr. Thompson?

A. Whether they installed that before or not—but I believe they was.

Q. You say it was?

I. I won't say positive.

Q. You don't know? All right! Now, you first heard

a commotion—you heard a commotion when You were back at this truck talking to this truck driver, is that right?

A. Yes.

Q. You: don't know how Merrill got out of your car, do you, of your own knowledge?

A. Of my own knowledge I didn't at the time.

Q. You didn't see him get out, did you?

A. No, sir.

Q. You don't know in what manner or form he got out of there, do you?

A. No, sir.

Q. You didn't hear anybody order him out?

A. I was too far away.

Q. You wouldn't hear anything like that if it was done!

A. No, sir.

Q. You say Clarence Brown was there that night, is that right?

A. Yes, sir.

Q. Zeno Merrill testified here yesterday, and he tes-176 tified that Clarence Brown was not there that night

If you knew that, would that change your judgment, on that point?

A. No, sir.

Mr. Hevl: I object to that.

The Court: Objection sustained.

Q. You say Mr. Rosskamp was there at the time you, said Mr. Brown hit Mr. Merrill, is that right?

A. Yes, sir.

Q. Just where was Rosskamp?

A. Around there with a bunch of the fellows, first one place and another, all over the hard road.

Q. Are you sure you didn't see Mr. Rosskamp until you came back from the round house?

A. No, sir, he was out there at the gate.

Q. He was out there at the gate at the time this scuffle took place?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Walter Kohtz was not there? It was his brother?

A, The one I saw was his brother. Q. This gentleman was not there?

A. I don't know whether he was or not, but his brother was.

Q. And this truck that you had this collision with, as

I understand it, you saw that a block and a half prior to your entering on the hard road?

A. Yes, sir.

Q. Your visibility was good?

A. You can't see over the top of the fellows.

Q. That didn't obstruct your view?

177 A. Partly.

Q. You can see for a block and a half?

A. Sure.

Mr. Knoblock: Your Honor, at this time the defendants are sure that in this complaint there was no allegations of any kind or character concerning the rockings this man has testified to at the time and place testified to, and we feel that it wouldn't—that it would be prejudicing our interests if we proceeded at this time to cross examine him on those points until the court ruled on that.

The Court: It won't prejudice your interests. I will rule on that at the conclusion. It won't be held against you,

Mr. Knoblock: There are various individuals that have been named by this man that are not defendants.

The Court: If they are not defendants, nothing can be done about it, that is quite certain.

Q. Now, you referred to some occasion where the P. & P. U. junction is on Main Street in East Peoria where you go to Metamora, is that right?

A. Yes, sir.

Q. Will you describe that place to me again?

A. Well, it's on Main Street, Route 24.

Q. On Main Street?

A. On Route 24.

Q. On Main Street on Route 24? Where is it with reference to the city hall in East Peoria? What direction?

A. It's north of there.

178 Q. Is that the hard road that goes over the crossing you referred to?

A. Yes, sir.

Q. As you proceed northerly from the city hall, you go right over the crossing you are referring to?

A. Yes. It's right there by the side of the track and the hard road.

Q. Now, was the place that you got called from Heil-

A. Somebody called up. He was the one that called.

Q. He was the one that called?

A. Yes, sir.

Q. You don't know what day that was?

A. I didn't keep track of the day. I wouldn't say.

- Q. When you arrived there, there was no one around there?
 - A. The fellows that work there was all.

Q. What?

A. The fellows that work there was all.

Q. Whom do you mean by that?

A. The fellows that gives them the track. They call up for track, and he gives it. He calls the tracks.

Q. You know all about this and we don't. I am just trying to find out where this man is you are referring to.

A. He was in that little office or shanty.

Q. Which side of the hard road is it?

A. Left side of the hard road going east.

Q. Left side of the hard road going north, you mean?

A. It's on Main Street on Route 24.

Q. And a man is stationed in a little office?

A. Yes, sir.

179 Q. Who was it that day?

A. Some man. I don't know what his name is.

Q. How long has he been employed by the P. & P. U.!

A. Yes sir. .

Q. Has he been there for months?

A. Yes, sir, somebody there all the time.

Q. Is he the man that put in the call for you to come, or was it Heilman?

A. The told me Mr. Heilman called up and wanted protection.

Q. You didn't get the call at all, but somebody else got the call and told you about it?

A. Sure: They always do.

Mr. Knoblock: I move the entire testimony with reference to that call be stricken.

The Court: I think it may be. I don't think it is ma-

terial. That all may be stricked

It would save time if we would get to the facts.

Q. When you got there, there wasn't anybody around! A. Nobody but the fellow that works over there.

Q. What happened when you got there?

A. They told me the engine was over there at the crossing on Washington Street.

Q. The engine was over where?

A. Over on Washington Street there, on Washington Street.

Q. In other words, it was about—It was near the Frank-

lin Street bridge, then?

A. It was, way up this way from the Franklin Street bridge; right there where you go into the P. & P. U. yard on Washington Street.

Q. You say it was on the Washington Street cross-

ing?

180 A. Yes, sir.

- Q. That is the crossing that is near what we might tail Mr. Strickfaden's garage? Is that the place you are referring to?
 - A. Yes, there is a garage there and a bowling alley.
 Q. That, is not on T. P. & W. property? It is on P. &

P. U. property?

A. Yes, right there, and there is a tavern. Q. There is where you found the engine?

A. Yes, sir.

Q: Was anybody around there then?

A. No, sir.

Q. What did you do?

A. Mr. Heilman wanted me to get on the engine with him.

Q: Heilman was there?

A. Yes, he was there. The crew was there, too.

Q. The crew was there?

A. Yes.

Q. Who was the crew?

A. Mr. Heilman was the only one I knew. The rest were all strangers to me.

Q. Then where did you go?

A. I went over to the P. & P. U. and got the cut of cars over there, down to the junction and got the cars.

Q. Is this the junction you first went down?

A. Yes, sir.

Q. Where is this stoning supposed to have occurred!

A. On Route 24 there by that spillway between the river bridge and this junction.

Q. Did you see the men, actually see them throw the rocks?

A. Yes.

181 Q. Whom did you see? A. The fellows I named.

Q. Every one of them? Is that right?

A. Yes, sir.

Q. That was Wilson, Underwood and who else!

A. And Rosskamp.

Q. Who else?

A. Gibbons. I guess I named Gibbons, didn't I?

Q: Who else?

A. St. Clair.

Q. Who else?

A. That was all.

Q. You didn't see anybody pull the air on the train, did you?

A. No, we was in the engine then. They were throwing

rocks.

Mr. Knoblock: I disclaim the latter part of the answer.

· Q. You didn't see anybody pull the air on the train!

A. No, sir.

Q. You don't know who did it?

· A. No, sir.

Q. You claim there was another stoning near the Illinois River bridge, is that right?

A. Yes.

Q. Who did you actually see throw rocks there?

A. Same bunch of fellows.

Q. You saw everyone of them do it?

A. Yes, sir.

Q. No different men or new men?

A. There was other fellows there, but I didn't know

182 what their names were.

Q. And the matters that you have testified to here this morning are all the matters you know of concerning the difficulties since this strike was started, is that right!

A. Yes, sir.

Q. And you say that in this engine cab at the time you are mentioning here at the Illinois River bridge there were six or seven in the cab besides yourself?

A. Yes, sir.

Q. Were some of them guards?

A. No, sir.

Q. A normal crew is three?

A. Yes. They have students on there.

Q. They had about three or four students in this cab.-

A. Yes, sir.

Q. -is that right?

A. Yes, sir.

Q. You didn't see anybody strike Merrill that night with a club, did you?

A. No, sir.

Q. You didn't see any of the pickets on the night of December 30 use a club on anybody, did you?

A. No, sir.

Q. The fact of the matter is you have never seen them use a club on anybody at any time, have you?

A. No, sir.

Mr. Knoblock: That's all.

183 Redirect Examination by Mr. Heyl.

Q. How many men pickets did you observe during the time the strike was in force from December 28, 1941, until last Saturday when we filed this complaint who had clubs in their hands?

A. Well, they had clubs at various times. They didn't.

have them all the time.

Q. During the entire period, how many men did you observe having clubs?

A. Oh, there would be four or five have a club.

Q. Out there?

A. At the gate at the lane that goes to the yard office.

Q. Was that true each time you passed?

A. Yes, sir.

Q. Did you notice any men having clubs in their hands located at other picket lines?

A. Yes, sir.

Q. Where 2.

A. At the viaduct.

Q. Where?

A. As the "Tip up" goes into East Peoria. It is in-East Peoria where the viaduct—

Mr. Knoblock: I object unless the parties are identified.

Mr. Heyl: We will identify them by name before we get through:

The Court: Let's get along, or we won't get to it.
Mr. Heyl: I am trying as fast as I can.

Q. Where is this viaduct?

A. In East Peoria.

Q. That takes in a lot of territory. Can't you tell me where it is?

184 A. I can't tell you the name of the street. I don't go by the name of the street.

Q. Is it over Lake Erie and Nickel Plate on Route 150?

A. Yes, sir.

Q. Was it near the west end of that?

A. Yes, sir.

Q. How many did you see there, or see there with clubs in their hands?

A. Oh, there would be four or five at a time.

2. How often would you see them?

A. Every day I happened to be down there.

Q. Is that on the line of the plaintiff?

A. Yes.

- Q. What other picket lines did you observe where there were men with clubs in their hands?
 - A. Those are the only two places I have been. Q. Can you name these men who had the clubs?

A. It was at night. I never saw them.

Q. In the day time when you went over the line, did you observe any men with clubs?

A. They had clubs at different times there.

Q. Can you give us the names of any of those!

A. No, sir.

Mr. Heyl: All right.

Recross Examination by Mr. Knoblock?

Q. You never saw any of them use a club on anybody at any time?

A. Not any person, no.

Mr. Knoblock: That's all.

I want to direct attention to a paragraph on page 23 of the complaint, the second portion, the allegation which makes the allegation with reference to the incident testified to by this witness of the train that was stopped and stoned on West Washington Street near the Illinois River bridge. There is a direct allegation in the omplaint.

The Court: All right. Is that all with this witness?
Mr. Heyl: Unless they want to ask him something about

that.

Mr. Knoblock: We have already asked him about that. Mr. Heyl: One more question.

Re-redirect Examination by Mr. Heyl.

Q. When you approached that intersection of the lane and the highway that night, as this truck neared the intersection, were you able to see it?

A. Oh, yes, you could see the lights of the reflection down the road.

Q. What is that?

A. You could see the lights reflect down the road.

Mr. Heyl: All right! That's all.

The Court: We will take a recess, gentlemen, for five minutes.

(Recess.)

186 RICHARD TAYLOR, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Richard Taylor.

Q. And where do you live, Mr. Taylor?

A. Hamilton, Illinois.

Q. Will you please keep your voice up?

A. Yes, sir.

Q. What is your age?

A. Forty-six.

Q. What is your business or occupation?

A. Conductor.

Q. And are you employed by the plaintiff in this case?

A. Yes, sir.

Q. What employment were you engaged in on December 30, 1941?

A. Hired out to the T. P. & W. Railroad.

Q. You were how?

A. Hired out to the T. P. & W. Railroad.

Q. What were you doing on December 30?

A. Brakeman.

Q. On what train?

A. Extra 41 west.

Mr. Knoblock: I can't hear that.

(Answer read by reporter.)

Q. From what point does that train start? A. Peoria yards.

187 Q. What was the destination of the train? A. Hamilton, Illinois.

Q. Will you tell the court the name of the engineer?

A. Homer Gulick.

Q. And the fireman?

A. I can't call his name.

Q. McAvoy!

A. McAvoy.

Q. And who was the conductor?

A. I was.

Q. And any other conductor on the train?

A. Mr. Sweet.

Q. Were there any other persons on the train?

A. Two student brakemen.

Q. Do you know their names!
A. One of them was Malone, and the other one was Smith.

Q. Was there or not a student fireman on the train?

A. Yes, sir.

Q. What was his name?

A. I can't call that.

Q. Was it Rudel?

A. No.

Mr. Knoblock: I didn't get his answer.

(Answer read by reporter.)

Q. What time did that train leave Peoria?

A. I don't just know.

Q. Was it in the morning or afternoon?

A. Morning.

Mr. Knoblock: I object to the leading form of the 188 question.

The Court: It may stand.

Q. Did anything occur in connection with the movement of that train after it left Peoria on that day, and before it reached Hamilton?

A. Well, we was stoned at Sciota.

Q. Where is Sciota located?

A. West of Bushnell.

Q. In McDonough County?

A. McDonough County, yes, sir.

Q. Will you describe to the court the circumstances of the stoning of the train?

A. We had spotted cars to the elevator and was lear-

ing town when we were stoned.

Q. And what part of the train was stoned?

A. Caboose.

Q. What damage, if any, was there to the caboose?

A. I couldn't say that there was any.

Q. Were you in the caboose?

Yes, sir.

Q. Haw many stones, if you know, were thrown at the caboose?

Well, I couldn't say. There was a number of them. probably a handful.

Did you see the persons who threw the stones?

No. sir. A.

Was it dark or light?

Dark. A.

Now, did the train proceed to its destination?

Ferris, Illinois. What happened at Ferris, Illinois? Q.

We had set one on the transfer and was leaving town,-

What happened? Q.

and we got some more stones. A.

Q. Was it dark there?

A. Yes. sir.

- Where were those stones thrown? At what part of the train?
 - They was thrown at the caboose.

Q. Where were you?

A. In the caboose.

Q. Now, at Ferris and at Sciota where this stoning took place, was this railroad near a highway?

Yes, sir.,

Q: What highway !-

Well, I don't know what one it is that comes in from the south. It happened at the crossing at Sciota.

Does the highway parallel the road?

A: No, it crosses.

It crosses?

A. East and west.

Were there any windows broken at that time?

A. No. sir.

Mr. Knoblock: I object.

The Court: He has answered.

Was there anything further that happened on that train before it reached its destination?

We were going into Hamilton at what is known as Taber's Switch,-

Q: T-a-b-e-r?

A. Yes, sir. -and we received some more rocks.

Was that stoning of the train at that time of the same character as the one you have described before?

Yes, sir. Route 94 crosses there.

Route 94?

Yes, sir. A.

What time did you reach Hamilton? Q.

A. About 9:30, I believe, as near as I can remember.

Now, what kind of a train were you operating that Q. day? The day that this occurred?

A. A freight train.

How many cars when you left Peoria?

A. Twenty-six, I believe. Mr. Knoblock: I didn't get that. (Answer read by reporter.)

Twenty-six cars, A.

Q. And did the train, the size of the train, increase or decrease as you traveled on to Hamilton?

A. Decreased.

Q. How many cars did you have when you got to Hamilton?

About nine and one; nine loads and one empty. A.

Where were the loads for? What was the destinations of the cars that were loaded!

A. Seven for Keokuk.

What? Q.

A. Seven for Keokuk, and one empty for Keokuk.

Mr. Knoblock: I didn't get it.

Seven for Keokuk, and one empty for Keokuk, Iowa, is that what you said?

A. Yes, sir.

Q. Did you deliver these cars to any other road? A. . Not until the next morning.

And where did you deliver them the next morning!

*C. B. & Q. at Keokuk.

At Keokuk? Q.

A. Yes, sir.

Q. · Speak a little louder.

A. Seven to the C. B. & Q., and one to the Rock Island.

Where was that delivery made? Q.

Down in the "Q" yards. A.

At Keokuk, Iowa? Q.

A. Yes, sir.

The morning of December 31, 1941, did you take Q. these eight cars with your engine over to Keokuk, Iowa!

A. Yes, sir.

Q. And make delivery there?

A. Yes, sir. Q. Then what did you do on December 31, 1941, after you delivered these cars to Keokuk, Iowa?

A. We picked up at Keokuk, and came back east.

Q. What did you pick up at Keokuk?

A. Eleven loads.

Q. And where did you get those eleven loads! You mean elevent cars!

A. Yes, eleven cars, at the Union Depot at Keokuk.

Q. Keokuk, Iowa?

A. Yes, sir.

Mr. Knoblock: I didn't get the place.

(Answer read by reporter.)

Q. Were those meight cars?

192 A. Yes, sir,

Q. Can you tell the court in a general way what these cars were loaded with?

A. There were nine cars of carbides, and two cars were

tanks.

Q. Do you know the destination of these cars?

A. The nine cars went to Chenoa to the Chicago & Alton.

Q. What?

A. Chicago & Alton, Two of them went to Effner.

Q. Effner, Indiana?

A. Effner, Indiana, and the Pennsylvania.

Q. Did you deliver these cars on your train?

A. No, sir, brought them to the Peoria yards.

Q. Now, what time did you leave Hamilton on December 31, 1941?

A. About 7:30.

Q. : In the evening?

A. Morning.

Mr. Knoblock: 7:30 in the morning is when they left Keokuk or Hamilton.

Mr. Elliott: Hamilton.

2. You went to Keokuk, then at 7:30 that morning?

A. We left Hamilton at 7:30. We came back from Keokuk.

Q. Coming this way?

A. Yes.

Q. That is what I thought. You had, prior to that time, delivered these cars in Keokuk, and picked up your load at Keokuk?

A. Yes, sir.

Q. At 7:30 A. M. you left Hamilton for what point?

A. Peoria yards.

Was the train operated by the same men that you had the day before?

193 Yes, sir.

Now, did anything happen to that train, or in connection with that train, before you reached the East Peoria yards?

Mr. Knoblock: My dates and time don't check.

Are you referring to December 31, and you are asking if he left Hamilton?

Mr. Heyl: He went over on the 30th, and left the next morning to come back.

Mr. Knoblock: What day were you in Keokuk?

What day were you in Keokuk?

A. 31st; morning of the 31st.

(Question and answer read by reporter.)

Q. Did anything happen with that train, or in connection with that train, before it reached the yards of the plaintiff in East Peoria?

A. We had no more trouble until we got east to the

Illinois River bridge.

Mr. Elliottt: Illinois River bridge?

Yes, sir.

That is in East Peoria?

·A.

Where is that with reference to the intersection of West Washington Street and the bridge?

Well, I don't know as to that; just as you pull onto

the bridge, the river bridge.

Do you know the street?

It is Washington Street, isn't it?

Q.

Yes.

A. We had just got across the crossing.

a. We had just got across the crossing. Q. That is what we call the "lower bridge" in Peoria?

Yes, sir.

The old bridge, is that right?

A. Yes, sir.

Q. What happened there?

We got a few more rocks thrown at the caboose, A.

Q. What is it?

A few rocks thrown at the caboose. A.

And did you see the persons that threw the rocks?

No, sir.

Q. Was that light or dark? Was it light or dark at that time?

A. It was dark.

Q: And then what did you do?

A. Proceeded on to the yards. We didn't stop.

Q. You continued on?

A. Yes, sir.

Q. You were in the caboose at the time you crossed West Washington Street?

A. Yes, sir.

Q. Can you tell us about how many stones were thrown at the train?

A. No. sir.

Q. More than one?

A. Well, I wouldn't— Q. You heard them, didn't you?

A. Yes, I heard them.

Q. Can you tell the court what it sounded like?

A. Well, it sounded like a couple; two.

Q. You proceeded on? A. Yes, sir.

195 Mr. Heyl: You may cross examine.

Cross-Examination by Mr. Knoblock.

- Q. Mr. Taylor, how long have you lived at Hamilton, Illinois?
 - A. How long?

Q. Yes.

A. About twenty years.

Q. You say your age is now forty-six, and that your business is that of a railroad conductor, is that right?

A. Yes, sir.

Q. And you did not enter the employ of the plaintiff until December 30, 1941?

A. Yes, sir.

Q. Where had you done railroad work before that?

A. T. P. & W.

Q. When?

A. Up until 1929.

Q. I see. Have you ever been employed by any road other than the T. P. & W.?

A. No, sir.

Q. You say on the train you left Peoria on to go to Hamilton, Illinois, Homer Gulick was the engineer, and a

gentleman by the name of McAvoy was the fireman, is that right?

A. Yes, sir.

Q. Do you know McAvoy's first name?

A. No, I don't.

Q. Do you know where he lives?

A. He lives in East Peoria. .

Q. And do you know when he went to work for the T. P. & W.?

196 A. No, I don't.

Q. You say a gentleman by the name of Sweet was the conductor with you, apparently two conductors?

A. Yes, sir.

Q. Was he a student conductor?

A. No, sir, I was the student conductor.

Q. You were the student conductor?

A. Yes, sir.

Q. This man Sweet, do you know his first name?

A. No, I don't.

Q. Do you know where he lives?

A. He lives in Peoria.

Q. He lives here in Peoria, Illinois?

A. Yes, sir.

Q. Do you know when he went to work for the T. P. & W.?

A. No, sir.

Q. Do you know whether or not he had worked for any other roads?

A. No, sir.

Q. You say there were two brakemen, Malone and Smith. Do you know Malone's first name?

A. Richard.

Q. Do you know where he lives?

A. At Hamilton.

Q. Hamilton, Illinois? And Smith, do you know his first name?

A. No, I don't.

Q. Do you know where he lives?

A. I believe he lives in Peoria.

Q. You think he lives here in Peoria?

A. Yes, sir.

197 Q. You don't know what time of day you left
Peoria that day, do you?

A. Not for sure. I wouldn't say for sure.

Q. And you say the first knowledge that you had of any stoning was at Sciota, Illinois, west of Bushnell?

A. Yes, sir.

Q. How far is that from Peoria, approximately?
A. Well, I would say sixty-five or seventy miles.

Q. Did that occur in the day time or night?

A. Night.

Q. You don't know who threw the stones?

·A. No. sir.

·Q. You are not able to identify anybody?

A. No. sir.

Q. And there was no damage done, as I understand you to say, to the caboose?

A. No. sir.

Q. Then the next time was at Ferris, Illinois. About how far is that from Peoria?

A. It's about a hundred miles.

Q. You don't know who threw the stones there?

A. No, sir.

Q. You weren't able to identify anybody?

A. No, sir.

Q. And again no damage was done to the caboose?

A. No, sir.

Q. And at Taber's Switch you don't know who threw the stones there?

A. No, sir.

Q. You are not able to identify anybody?

A. No. sir.

198 Q. How far is that from Peoria?

A. About a hundred and twelve miles.

Q. And you got into Hamilton at 9:30, you say?

A. Yes, sir.

Q. Is that in the night or morning?

A. Night.

Q. Then on the morning of December 31, 1941, you proceeded with the train to Keokuk, Iowa, is that right?

A. Yes, sir.

Q. How far is Hamilton from Keokuk, Iowa!

A. A mile.

Q. About one mile?

A. They call it a mile.

Q. And you left Hamilton the morning of December 31 at 7:30, is that right?

A. Yes, sir.

Q. You were bound for Peoria, and there was nothing

unusual happened until you got east of the Illinois River bridge in East Peoria?

A. Yes, sir.

- Q. About what time of the evening did you arrive there?
 - A. Well, I would judge around 8:40.

Q. P. M., that would be?

A. Yes, sir.

Q. And a couple of rocks hit the caboose,-

A. Yes, sir.

Q. -is that right?

A. Yes, sir.

Q. You don't know who threw them?

199 A. No, sir.

Q. You weren't able to identify anybody?

A. I couldn't identify them.

Q. During that period of time, you heard nobody make any threats to you or anyone else?

A. No, sir.

Q. And you have no idea who might have thrown those rocks?

A. No, sir.

Q. Now, the 31st was the last day that you have testified to here in court today. Have you worked since the 31st?

A. Yes, sir.

Q. And there have been no other incidents that have been brought to your attention, have there, that you know of of your own knowledge?

A. Well, I wouldn't say as to that.

Q. You don't know.

Mr. Heyl: I object to that. That isn't what he said.

Mr. Knoblock: I am just trying to find out what he means.

Mr. Heyl: I object as not cross examination.

Mr. Knoblock: All right, I will withdraw the question.

The Court: All right.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. I want to ask you, Mr. Taylor, how long you have worked for the T. P. & W. altogether.

A. Well, I wouldn't say.

200 Q. How many years?

A. Now or prior?

Q. Prior.

A. Well, I couldn't say for sure.

Q. Have you got some idea about how many years?

A. Well, that would take back quite a ways. I went to the army in 1918, and I was railroading up to then, then when I came back I railroaded some.

Q. Until 1929?

A. No, I had quit in between.

Q. What work did you do for the railroad?

A: Brakeman.

Q. Brakeman?

A. Yes, sir.

Q. Have you any judgment about the number of years you have worked as a brakeman?

Mr. Knoblock: I object as improper and not redirect.
The Court: Do you know how many? Four, five, six or ten?

A. Four or five, I would say.

Q. Are you acquainted with Richard W. Malone, the man you said was on that train?

A. Yes.

Q. Do you know where he is now?

A. He is in the caboose sick.

Q. Where?

A. In the caboose.

Q. Unable to come to this trial?

A. Yes, sir. He was up all night.

201 Q. Where is he?

A. Over in the East Peoria yards.

. Mr. Hevl: That's all.

Mr. Knoblock: That's all.

JOHN H. SWEET, called on behalf of the plaintiff, and , having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. John H. Sweet.

Q. How old are you?

A. Fifty-two.

Q. Where do you live?

A. 619 East Republic.

Q. Peoria, Illinois?

A. Yes, sir.

Q. Are you employed by the plaintiff in this case?

A. Yes, sir, I am.

Q. How long have you been employed?

A. About ten years.

Mr. Knoblock: I didn't get that.

A. About ten years.Q. In what capacity?A. Train dispatcher.

Q. And has that been a continuous employment?

A. It has.

202 Q. Now, on December 30, 1941, did you have anything to do with the operation of extra 41 west?

A. I did.

Q. Tell what you can about that.

A. I was conductor on the train, handled it west from the Peoria yard to Hamilton and Keokuk.

What happened on that trip?

A. Well, the unusual happening, we got a few rocks cast at the caboose at Scotia, and a rock or two cast at the caboose at Ferris,—

Mr. Knoblock: I want to get these.

A. —and going down the hill after we left Elvaston, just went of Elvaston.

Q. E-l-v-a-s-t-o-n? Is that near Taber's Switch or Crossing?

A. Just east of Taber's Crossing.

Q. What occurred there?

A. Well, they hit the caboose with rocks.

Q. Mr. Sweet, I don't believe all the people can hear you. I think you can speak louder if you try.

Now, on the return trip were you conductor?

A. I was, yes.

Q. And were any of the cars in the train you took west, number 41 west, delivered at Keokuk, Iowa?

A. Yes, we delivered one the next morning at Keokuk,

yes.

Q. And was that a loaded car?

A. That was a load, yes.

Q. What?

A. It was a load.

Q. What about the cars that you came back with?

203 A. We got some loads and some empties at Keokuk for the east.

Q. Brought into Illinois?

A. Yes.

Q. Then did you come east with that train?

A. Well, we picked up along the road in addition to what we had there. There was a car of gasoline for Canton that we got at Keokuk in that bunch there.

Q. What else did you pick up? Various cars?

A. Various cars along the line. We picked up five loads at Lomax, and we picked up cars on the way in.

Q. The cars at Lomax, were they delivered by any other road to you?

A. Delivered by the Santa Fe, yes.

Q. What was the destination of those cars?

A. Well, I don't know what the final destination was on all of them. Some were Peoria, East Peoria, gasoline and stuff like that.

Q. Do you know where they started from?

A. Oklahoma.

Q. What were they? Oil cars?

Mr. Knoblock: We object; no foundation.

The Court: We will save time.

What did they contain? Do you know?

A. One car was a car of gasoline. We had four box cars. I don't remember just exactly what they were. The car of gasoline was for the Martin Oil Company at East Peoria.

Q. Those cars were shipped from what point?

A. They were Oklahoma.

Mr. Knoblock: I object; no proper foundation, not the best evidence.

The Court: He may answer if he knows.

204 A. Oklahoma cars.

Q. Delivered to your road by what road?

A. Santa Fe.

Q. Is that the point where the Santa Fe delivers freight to you?

A. That is our connection, yes.

Q. Where were the cars at Keokuk? Where were they from?

A. I don't know where that car at Keokuk came from. I didn't notice the bill. I have—had a clerk on there that made the wheel report.

Q. Those cars were brought into Illinois?

A. Yes. One of them was a Canton car of gasoline, V. E. & X. car. I don't remember the number.

Q. Did anything happen as you travelled east?

A. We had one rock cast after we crossed the river.

Q. Where were you!

A. In the caboose, and that is what I heard.

Q. You heard that?

A. Yes.

Q. Do you know who threw the rock?

A. I do not.

Q. What happened following that?

A. That was the end of that run. Q. And you delivered the train?

A. To the East Peoria yards, yes.

Q. I will ask you if you acted as pilot on extra west from Peoria to Keokuk on January 1, 1942.

A. I did not. I went down to the depot to act as pilot,

but the train didn't run.

Q. What did you observe at the station in Peoria?

205 A. I went into the restaurant to get a package of cigarettes, and while I was in there an ex-conductor, Chandler, brakeman Lucas, brakeman Waller—

Mr. Knoblock: What was the last?

A. W-a-l-l-e-r, and one other man whose name I didn't know (his face was familiar; he worked over there; I knew his face), they came—Chandler did the talking and he told me—He asked me first if I saw extra 41 west the day before and I said I did. He said, "You saw what happened to that train, didn't you?" I said, "I did." He said, "We haven't really started yet. We are going to get really rough today,"

Q. Then what happened?

A. He tried to discourage me. Mr. Heyl: That's a conclusion.

Mr. Knoblock: Let him go ahead.

A. He tried to discourage me going out on that train. He said it wouldn't be safe to go on the train, that the train wouldn't get out of the East Peorin yard, that if it did it wouldn't get to Hollis.

Q. What else did he say?

A. He wanted to know anyway where I was going to ride, and I said, "The engine."

Mr. Knoblock: I am going to object to all this con-

versation because there is no such allegation in the complaint. I have a standing objection to that. Furthermore, this man Chandler he's referred to is not a defendant here, not a party to this suit.

The Court: He is a former member of the union, is he

not, or is not a member?

206 Mr. Heyl: Yes.

Mr. Knoblock: I don't know.

The Court: I think he may answer. Objection overruled.

A. He told me if I intended to ride that engine I had better get behind something because they intended to take care of it.

Q. Is that R. V. Chandler?

A. Yes.

Mr. Heyl! Is Mr. Chandler in the court room? Mr., F. W. Lucas in the room? Mr. Maguire in the room, C. A. Maguire?

Mr. Knoblock: He wasn't mentioned by this man,

Mr. Heyl: Mr. C. T. Waller?

Q. Those two men were present when Chandler made that statement to you?

A. They were, yes.

Q. Are these former employees of the plaintiffs?

A. They are.

Q. Do you know G. C. Kneisley?

A. Yes.

Q. Was he there that morning?

Mr. Knoblock: I object. He didn't say anything about him.

The Court: He may answer.

A. He wasn't in that bunch.

Q. Did you see him that day?

A. Yes, when I walked down to get on the engine.

Q. Where did you see Kneisley?

A. Just outside of the station on the east side.

207 Q. Same day?

A. Yes, about half an hour later.

Q. What train was that you were going to get on?

A. It was extra 41 west. I thought I heard the engine whistle, and I came down to get on, but it wasn't, and Kneisley and Lucas met me at the door of the station, east side of the station.

Q. Is that the gentleman that answered to the name of Frank W. Lucas—the man?

A. Yes.

Q. And, Mr. Kneisley, please stand up. (Person named rises.). Is that the man?

A. Yes.

Q. Anyone with these two men?

A. No, just those two.

Q. Are these men former employees?

A. Yes.

Q. What did they say?

A. Kneisley told me practically the same thing Chandler did, that it wouldn't get out of the East Peoria yard, if it did it wouldn't get to Hollis. He tried to discourage me, and told me the same thing.

Q. What was that?

A. That it wouldn't be safe. Q. Did you go on that train?

A. It didn't run, and I didn't go.

Q. Was there a train that did move west that day?

A. No.

Q. Was there a train that went west on January 2?
A. Yes.

208 Q. Were you on that train?

A. No, I was not.

Q. Did you see that train go west?

A. No, I didn't.

Q. Now, on December 31, 1941, what, if anything, did you observe at your home?

A. Well, it was on the 31st. There was a continuation of calling my house on the telephone.

Mr. Knoblock: What was it?

Mr. Elliott: Calling his house on the telephone.

A. They called until about 11 o'clock that night.

Mr. Knoblock: I object unless he says who he means by "they."

The Court: Yes.

Q. Tell the circumstances and what happened?

A. I was frequently called, and they wanted to know if I was the man that worked for the T. P. & W. I wouldn't be able to say who it was called because I didn't recognize the voice calling.

Mr. Knoblock: I move it be stricken.

The Court: It may stand.

Q. Did you have any experience like that before this strike?

A. No.

Q. What else did you observe at your home?

A. On January 1 in the morning, about 5 o'clock in the morning, I was called to the front door of the house, and there was two cars parked in front of the house. One was a coupe and one was a sedan. About 5 o'clock in the morning and about 5:15; the coupe left and the sedan stayed there for about thirty minutes, and it left.

209 Mr. Knoblock: You say about 5:15?

A. About 5 o'clock I saw them.

Mr. Knoblock; And 5:15 the coupe left, is that right?

A. Yes.

Mr. Knoblock: And about 5:45 the sedan left?

A. That's right.

Q. Did you observe the passengers in these cars?

A. Well, there was four men in the sedan and two in the coupe, but I didn't know the name of any of them.

Q. Did you recognize the men?

A. I recognized one or two I had seen over there working.

Q. You recognized their faces as former employees?

A. That's right.

Q. Is there any other incident I haven't asked you

about that you have knowledge of?

A. Well, the night that the temporary restraining order was on, effective, I went through the gate over there, and I had been reprimended by Gabbert, one of their men, for running the "stop" sign.

Mr. Elliott: Is Gabbert in the room?

(Person named rises.)

Q. Is that the man?

A. Yes.

Q. What did he say?

A. He said I shouldn't run the "stop" sign. He said I had been running the "Stop" going through the picket line. He said "You have to stop for this picket line." I did, and I believe it was that man Newdigate that came—

Q. Is Newdigate in the court room? (Person named

rises.) Is that him?

210 A. Yes. I asked him how things was going, and he said, "They have a temporary restraining order for five days, and they are going to keep peace in the

family, and when that is over we will take after them again."

Q. Is that Newdigate?

A. Yes.

Q. Is he one of the detendants in this case?

A. Yes.

Q. What else happened?

A. That's all.

Q. Any other incident?

A. No, that's all that I have been mixed up in.

Q I personally do not understand this "Stop" sign.

· Will you tell the court what this is?

A. In the first place, they had a nail keg in the middle of the road with a fire in it, and we had to stop or run over the nail keg, and they would have two or three men standing in the road, and you had to wait for them to get out of the way or run over them.

Q. Is that the private lane?

A. That leads from our round house to the road.

Q. Route 24?

A. Yes. It was in the road. The nail keg was in the road about fifteen or twenty-feet from the pavement of the hard road.

Q. Is that lane the property of the plaintiff?

A. That is.

Q. A private lane?

A. That is.

Q. Is that the only means of reaching the property from Route 24?

211 A. With an automobile, yes.

Q. That is what I mean.

A. Yes.

Mr. Heyl: That's all. Cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Sweet, how long have you worked for the T. P. - & W.;

A. About ten years.

Q. You say that you were a train dispatcher there!

A. I am, yes.

Q. That is a semi-official position, is it?

A. Supposed to be, yes.

Q. Then you left that to become a conductor, is that right?

A. Well, I--

Q. Is that right?

A. All right! O. K.! Yes.

Q. And on this trip of December 30, 1941, as you went west on extra 41, at Sciota where you say one or two rocks were thrown, you don't know who threw those rocks, do you?

A. No.

Q. You don't know where they came from, do you?

A. I haven't any idea.

Q. No damage was done, was it?

A. Nothing more than marking up the side of the caboose where they hit,

Q. No windows broken?

A. Not on our caboose.

- Q. And the same thing is true at Ferris!
 A. Yes.
- 212 Q. You don't know who threw those rocks?
 - Q. Do you know where they came from?

A. No.

Q. The same thing is true at Elvaston?

A. Yes.

Q. You don't know who threw them there?

A. No.

Q. When you came back and you got east of the East Peoria bridge, the caboose was hit by one rock?

A. Yes.

Q. You don't know who threw that?

A. No.

Q. You don't know where it came from?

A. No.

Q. This man Chandler you speak of, he did all the talking?

A. He did at the restaurant.

Q. When Lucas and Waller and one man was there you didn't know, Chandler is the only one that did any talking?

A. That's right.

Q. The rest of the men kept still?

A. That's right.

Q. And then outside you saw Kneisley and Lucas, is that right?

A. That's right.

Kneisley said about the same thing Chandler did!

A. . That's right.

Lucas never said anything there, did he?

No.

Regardless of what they said, if the train had Q. 213 run you were going?

A. I was going, yes.

There wasn't any train that went west that day?

That's right.

On these telephone calls you say you received December 31, '41, you don't know who called you, do you!

A. No.

Q. You couldn't place the voice of any man or woman that called you there?

A. No.

Q. And on January 1, 1942, you spoke about two cars parked in front of your house. There wasn't a one of those men that got out of those cars, did they?

A. No.

Q. . There wasn't a single threat made to you from those automobiles that day,-

A. No.

-isn't that right? Q.

A. That's right.

Gabbert, you said, said something to you about Q. stopping, is that right?

A. That's right.

There never was an occasion they failed to let you through, was there?

A. No.

And you have told all that you know about this Q. situation, is that right?

That's right.

Q. Did you ever have conductor experience prior to 214 this trip that you took on extra 41 west on December 31, 1941? . .

I have, yes.

· Q. On what?

Midland Southwest Railroad and on the Grand Trunk The Grand Trunk Pacific was about 1913. Pacifie.

What run did you make?

Baker, Sasketchewan and Edmundton, Alberta. A.

Q. Just the one year of 1913? 1913 just temporary...

How long were you on that run?

I was on it for about six months.

And the first part of 1913, or latter part of 1913?

A. That was in the summer part of the year because I was yardmaster at Edmundton that winter:

What other road?

Midland Southwest, a part of the Georgia and Florida now.

What year were you there? Q:

1912 and 1913; part of the year of '13, A What runs did you make down there?

A. Local freight.

Since 1931 you have never had any experience as a conductor?

That's right. A.

Q. And you went out this day?

That is right. A.

Why did you leave those roads as a conductor?

Mr. Heyl: I object as immaterial why he left.

The Court: I think he may answer if he had any particular reason.

It wasn't my line of work.

Did you get a service letter from them?

I never had a service letter in my life from any railroad.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. What is your line of work?

A. Train dispatcher, telegraph operator and general accounting, stuff like that.

Have you been in railroad work all your life? Q.

A. I have since 1907.

Before you came to the T. P. & W. About ten years?

I was with the Texas-Pacific Railroad at Fort Worth, Texas, and Big Spring, Texas.

Q. What capacity?. A. Train dispatcher.

Q. How many years did you work for that road?

A. I.was with them about two years.

Q. Then what road?

Before that I was with the Missouri-Pacific Railroad, and I worked for the Santa Fe and Atlantic Coast Line. In fact, I have worked for probably fifteen railroads in the last twenty years, maybe more.

Q. In what various capacities?

Train dispatcher, chief dispatcher.

Mr. Heyl: That's all.

Mr. Kncblock: That's all.

216 R. F. McKINNEY, called on behalf of the plaintiff, and having been first duly sworn, testified as fol-. lows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

R. F. McKinney. Α.

Where do you live? 507 North Street. Q.

Q. Peoria, Illinois?

Peoria.

What is your age?

I am thirty-one. A.

What is your business or occupation?

A. . I am a transit man from the engineering department of the T. P. & W.

How long have you been employed by the T. P. & W.!

A little over eight years.

And in what capacity?.

I have been general storekeeper, and most of my time has been spent in the engineering department.

Are you familiar with the railroad of the plaintiff!

Yes, sir.

Q. And I will ask you if you had anything to do with the train known as extra 43 west on December 29, 1941?

Yes, sir, I was acting as head brakeman.

Had you had that experience before?

No, sir.

And what were you doing on the train? Where 217 were you stationed on the train?

I was on the engine.

Q. What time did that train leave East Peoria, and what was its destination?

A. It left East Peoria at about 11 o'clock, as I remenber it.

Mr. Knoblock: In the morning or evening?

A. In the morning, and the destination was Hamilton. Illinois.

Q. A freight train?

A. A freight train, yes, sir.

Q. Now, will you tell us who the other persons were on that train as the operators or employees?

A. The conductor was Mr. Carnarius.

Mr. Knoblock: How do you spell that name?

Mr. Elliott: C-a-r-n-a-r-i-u-s.

A. E. P. Owens was another brakeman. E. A. Lawson was acting as pilot. He is roadmaster on the western division. Ed Tucker was the fireman. L. C. Ward was acting as engineer, and there were two special agents. I don't know their names.

Q. Now, did anything happen in connection with that

train as it traveled westerly toward Hamilton?

A. Yes, at Sciota. Darkness had fallen. It was about 7 o'clock and, as we went by the depot at Sciota, I noticed a car on the road crossing just west of the depot, and as we went by the crossing I saw three men come from alongside of the car, and something struck the side of the cab.

Mr. Knoblock: Of the engine!

A. Of the engine cab, yes, sir.
Q. You were riding on the engine?

. Yes, sir, on the fireman's side.

218 Q: 'What else did you observe?

A. Not a thing. The rest of the trip was uneventful. We tied up in Hamilton a little after 8 that evening.

Q. That was on December 29, 1941?

Yes, sir.

Q. Now, did you have anything to do with extra 43 east on December 30, 1941?

A. Yes, sir.

Q. 'Now, go back to this other incident at Sciota. I have just one question.'

A. Yes, sir.

Q. Did you observe the character of the article that hit the locomotive?

A. No, sir.

Q. The sound of it?

A. Yes, sir, it sounded pretty heavy, like a brick or something heavy.

Q. Where did it strike?

Mr. Knoblock: I object, and move the former answer be stricken.

The Court: That it sounded heavy? I think that may stand.

Q. Where did it strike the engine? What part?

A. It sounded to me like it struck just below the window.

On the cab?

On the cab, yes. A.

On extra 43 east on December 30, 1941, were you on that train?

A. Yes, sir.

- D. Same capacity?

Acting in the same capacity as I was going west.

Same crew on that train?

And the same crew.

Q. Go ahead!.

I noticed nothing happened until we came into Peoria, East Peoria at the viaduct, at the west end of the

Mr. Knoblock: The viaduct at the west end of the yard?

A. Yes, sir.

Q. Let me get straightened on that. Is this the same train coming back from Hamilton the next day?

A. Yes, sir, that is right.

Q. Where is the viaduct with reference to the Nickel Plate crossing?

A. The Nickel Plate crossing is almost underneath the viaduct.

.0. Is that the viaduct on Route 150?

A. Yes, sir, to Metamora.

Q. State Route 150?

State Route 150: A.

Q. About what time was that?

A. Well, I am not sure of the time. I think we tied up a little after 6. It was after dark.

What did you see?

Α. I saw a bunch of pickets down there.

Where? Q.

At that hittle-Right there where the road leads onto West Washington Street, or East Washington Street.

Mr. Knoblock: Is that what we have been calling the lane?

Α. No. sir.

Q. Near, the viaduct?

A. Near the viaduct.

Q. And near the Nickel Plate crossing? A. Yes, sir.

Q. How many were there?

A. There were several; four or five at least.

Q. Did you recognize the man either by name or by appearance as former employees of the railroad?

A. No, sir, it was too dark.

Q. What happened?

A. Something struck the cab again.

Q. Where?

A. I would say on the roof that time.

Q. What was the sound?

A. Something heavy hit the engine again.

Q. And what time, with reference to the time your passed under the viaduct?

A. At the same time.

Q. All right! Now, will you tell me what other train you operated since the strike and prior to the time this injunction was issued?

A.: On December 31 I went east on extra 40 east.

Mr. Knoblock: What?

A. Extra 40 east.

Q. What was the destination of that train?

A. That was Effner, Indiana.

Q. From what point?

A. Peoria yard.

Q: Same position? Did you occupy the same position on that train?

A. Yes, sir, and as a pilot.

221 Q. A pilot?

A. Yes, sir.

Q. What about the crew?

A. A fellow named Leasure was the fireman. Mr. Knoblock: How do you spell that!

Mr. Elliott: L-e-a-s-u-r-e.

A. Compton was the engineer, Jacob Armstrong was conductor, Lyndal Douglas was the brakeman, another Brakeman Handley, I think his name was.

Q. What date was that?

A. That would be December 31.

Q. What did you have in that train in the way of cars?

A. I don't know.

Q. Do you know what the destinations of the cars were? Do you know the destinations of the various cars?

A. Yes, sir, there were several empties, I know, to be

set here and there at various stations along the line, but I didn't pay much attention to what was in them.

Q. Did you go to Effner?

A. Yes.

Deliver some of the cars from Illinois into Effner, Indiana?

A. Yes, sir.

How many cars?

A. I think we went into Effner with about four cars.

Now, on the return trip from Effner, Indiana, to Peoria with that same crew, what happened, if anything, along the way?

A. At Fairbury we went into a back track just west of the depot on the north side to spot five grain cars at the elevator.

What do you mean by "spotting"?

A. You set the car at the elevator so it is already for the spout to be stuck into the car to load grain and, to get into this back track off of the passing track, it was necessary to line the switch for the back track and also take the derail off the rail. We went down in there and spotted the cars, and cut off the engine and one car which we were not leaving, and the engineer stopped and I looked out around the engine (I was riding the rear end), and the derail had been thrown back on the track again.

Q. While you were operating?

.A. Yes, sir.

Q. What was the result of throwing the derail?

Nothing; the engineer saw it.

What would have been the result if he hadn't noticed it?

Mr. Knoblock: I object; speculative. What effect does a derail have?

The Court: He may answer.

A. If the derail hadn't been observed, it would have put the engine on the ground. That is the purpose of it.

Q. Did you see anyone around there?

A. No, sir, I didn't, although a car kept circling around, but I didn't notice who was in the car, or who it was...

Q. Do you knowswhen the derail was thrown? .

It must have been sometime after we-

Mr. Knoblock: I object to this.

The Court: Do you know when the derail was thrown!

A. No, sir.

Q. Was the derail thrown when you went in with these cars to spot them?

223 A. Yes, it had to be taken off to get in there.

Q. When you came back out, you found it back on?

A. Yes, sir.

Q. Do I understand this occurred sometime while you were making this switching?

A. That's right.

Q. When was that with reference to the time you saw this car? The automobile circling around?

A. At the same time.

Q. Did you observe whether the car had any passengers in it?

A. As I remember, it had two, the driver and another passenger in the front seat. It was a sedan.

Q. How many times did you see that car circling around the point where this switching was being done?

A. Three or four times. It crossed the track,

Q. This was at Fairbury, Illinois?

A. Yes, sir.

Q. Livingston County?

A. That's right.

Q. As you came west with that train, what happened, if anything, after you left Fairbury?

A. At Washington was the next incident.

Q. That is in Tazewell County?

A. Washington, in Tazewell County. Just before we reached the Alton crossing there, rocks were thrown. I guess they were rocks; missiles of some sort were thrown and hit—the cab. I was standing behind the engineer. Something hit, the windshield and also the window glass, and broke the glass out of both.

Q. I didn't get the last part of your answer.

224 A. Broke the glass in both the window and the windshield.

Q. Of the locomotive? A. Of the locomotive.

Q. Did you observe—Was that on the engineer's side of the train?

A. Yes, sir.

Q. Now, what did you observe with reference to the persons that threw these articles?

A. I didn't see them. I didn't see them at all.

Q. Did you see anything else?

A. No.

Q. Did you see that automobile again you saw at Fairbury?

A. No, sir.

Q. Now, what happened at East Peoria when that train reached East Peoria?

A. I heard something strike the side of the engine at Farmdale just before we reached East Peoria.

Q. Farmdale is how far from East Peoria?

A. I would say it is about two to three miles east of the East Peoria yards.

Q. Where did those articles strike the train?

A. It sounded to me like they hit the tender and missed the engine.

Q. You were riding on the engine?

A. Yes, sir.

Q. Did you see anyone in connection with that transaction?

A. No, sir.

Q. Let's go back to Cruger. Did anything happen at Cruger?

A. No, sir, not that I know of. Nothing happened on the engine.

Mr. Heyl: You may cross examine.

225 - Cross-Examination by Mr. Knoblock.

Q. Mr. Kinney, you live here on North Street in Peoria!

A. Yes, sir.

Mr. Heyl: May I ask one more guestion?

Direct Examination by Mr. Heyl (Resumed).

Q. Did you bring any cars from Effner, Indiana, on your return trip into Illinois?

A. I don't believe they were from Effner. I am not

sure about that.

Q. Did you have the same engine on this train from Effner, Indiana, until you reached Peoria?

A. Yes.

Q. That was the same engine and the same tender?

A. Yes.

Q. And was the same engine that you used from Peoria to Effner, was it not?

A. That's right; yes, sir.

Cross-Examination by Mr. Knoblock (Resumed).

Q. You say that you were a transit man in the engineering department?

A. Yes, sir.

Q. Have been there about eight years?

A. Yes.

Q. What are the duties of a transit man?

A. Civil engineering; surveying.

Q. That has nothing to do particularly with running a railroad engine?

226 A. No, sir.

Q. The fact is you never run a railroad engine before December 29, 1941, had you?

A. I have been out on work trains considerably, and I have been around them, so that I was more or less used to the operation of the trains.

Q. But you yourself had never been employed in any capacity of that kind prior to that date?

A. No. sir.

Q. And the first time you went out you were acting as head brakeman?

A. Yes, sir.

Q. On extra 43 west?

A. Yes, sir.

Q. Now, on that train, its destination being Hamilton, the conductor was a man by the name of Carnarius?

A. Yes, sir.

Q. What is his first name?

A. Clarence.

Q. Where does he live?

A, I don't know. I couldn't tell you that.

Q. Does he live here in Peoria?

A. I think he does.

Q. And the brakeman under you, a student brakeman, apparently this E. P. Owens?

A. Yes.

Q. What was Carnarius's work before he became a

A. I think he was a car foreman.

Q. And E. P. Owens had never worked as a brakeman before?

A. No. sir.

Q. Where did he work before?

A. On the "rep" track.

Q. On the "rep" track?

A. Yes, sir.

Q. Where does he live?

A. I think he lives in East Peoria.

Q. Now, this E. A. Lawson, what was his work before he went out on this trip?

A. He is a roadmaster.

Q. How long had he been with the T. P. & W.?

A. I can't answer that. I don't know.

Q. How long had Carnarius been with the T. P. & W.

A. I don't know that.

Q. How long had Owens been with the T. P. & W.?

A. I don't know.

Q. In fact, he hadn't been with them before?

A. Who is that? Owens?

Q. Owens.

A. He as been here at least five years.

Q. He is the man that worked on the 'rep' track? This E. A. Lawson, you say he was a train dispatcher before:

A. No, roadmaster.

Q. Where does he live?

A. In LaHarpe, Illinois.

Q. Now, Ed Tucker, you say, was the fireman?

A. Yes, sir.

228 Q. What was his work prior to this trip here?

A. He has worked in the round house, and I think the machine shop.

Q. In what capacity?

A.: I don't know the various capacities he has worked at. He is a machinist, I think.

Q. How long had he been with the T. P. & W.?

A. I don't know that.

Q. Where does he live?
A. I think in East Peoria, but I am not sure.

Q. You say L. C. Ward was the engineer, is that right!

A. Yes, sir.

Q. What was his work prior to being an engineer?

A. A hostler.

Q. Where does he live?

A. He lives in Peoria.

Q. Now, there were two special agents on that train!

A. Yes, sir.

Q. You know special agent Kipling, don't you?

A. Yes, sir.

Q. You know special agent Howe, don't you?

A Yes

Q. You know special agent Thompson, don't you?

A. Yes, sir.

Q. Those two special agents were neither one of those men!

A. No.

Q. They carried guns, didn't they?

A. Yes, sir.

Q. They were loaded, too, weren't they?

A. I don't know.

Q. And they were there in the cab of the train?

A. One was in the cab, the other in the caboose.

Q. And that was on December 29?

A. Yes, sir.

Q. Do you know where those two men that earried those

A. No, sir,

Q. Do you know where they live?

A. No. sir.

Q. They were with you on the return trip?

A. Yes, sir.

Q. And how many guns did each one of them have?

A. As far as I know, one.

Q. There may have been others?

A. There may have been.

Q. What kind of a gun was it you saw?

A. It was a revolver. What calibre and kind I don't know.

Q. 38 or 45? Do you know?

A. I don't know.

Q. Did they have any sawed-off shotguns?

A. No, not that I saw.

Q. None that you saw ?..

A. None,

Q. Have you made any more tripe with those special agents?

A. Not with those two.

Q. But on the other trips you have made, you have had special agents on there?

A. Yes.

Q. They carried guns?

230 A. Yes.

Q. They were loaded? .

A. As far as I know.

Q. On the trip you took to Effner, Indiana, how many

special agents did you have? One in the engine, and one in the caboose?

A. One in the engine, and one in the caboose? Yes.

2. Do you know whether they had sawed-off shotguns!

A. Not that I saw. . .

Q. Do you know the size or calibre revolver they were carrying?

A. No, sir.

Q. They were practically by you on the trip over to Effner, and they accompanied you back, too?

A. Yes, sir.

Q. Were they the two special agents that went to Effner with you that went on 43 west? The ones that went east were other men?

A. · Yes.

Q. Do you know how many special agents or men that carried guns have been employed by the T. P. & W. since December 29 to January 2?

Mr. Heyl: I object; not cross examination.

The Court: Objection sustained.

Q. How many men carried—carrying guns were on the train that came back from Effner, Indiana, to Peoria?

A. Two.

Q. Did you recognize them as ever having worked for the T. P. & W. before?

Mr. Heyl: I object to that as immaterial. The Court: He may answer if he knows.

A. No.

231 • Q. Did the special agents investigate that car that you say was circling around there at Fairbury

A. They got down on the ground, got out of the engine

cab.

Q. They didn't go out to get the license number or anything of that kind?

A. No, sir.

Q. They did no more than get on the ground by the engine?

A. They rode back and forth on the engine.

Q. Have you been working as a brakeman since the 29th of December up until now?

A. No, sir, I made—when we came in from the east end, was the last trip I made.

Q. Last trip you made?

A. Yes, sir. .

Q. On these two trips that you took on extra 43 west

and on the trip to Effner, Indiana, did you see anybody at any time at any place ever have any guns other than these fellows that carried the guns that were riding the trains?

A. No, sir.

Q. Now, going on this extra 43 west at Sciota at 7 P. M., you say it was dark?

.Q. Something struck the side of the cab? Was that just one blow?

A. Just one.

Q. You don't know whether it was a rock that was. thrown or kicked up or something else! You don't know how it got there, do you?

A. I saw a fellow in the darkness there draw back his

arm, and I presume that he threw something.

You didn't mention that in your direct examination, did you?

A. No, I didn't. Q. You don't know who that fellow was?

No. sir.

You don't know-You were unable to identify him?

That's right. A.

Q. Now, you got to Hamilton that night about 8 P. M.?

A. Yes, sir.

Then coming back from Hamilton on December 30, 1941; the trip was completely uneventful until you hit the Nickel Plate crossing, is that right?

Yes, sir.

And you saw some individuals that you say were four or five pickets, is that right?

A. Yes, sir.

Q. It was so dark and you were so far away you were unable even to identify them as former employees of the T. P. & W.?

A. Yes, sir.

If you were unable to identify them as former employees of the T. P. & W., how do you know they were pickets?

Well, I don't know that they were pickets.

You don't know if there were pickets there then, do vou?

No, sir.

You say something hit the roof, heavy hit the roof of the cab?

A. Yes.

Q. You don't know who threw that?

A. No, sir.

Q. You don't know where it came from?

A. No, sir.

Q. You don't know whether those four or five men you saw there threw it or something threw it, or whether 233 it came from some other source?

A. I saw one of the men on the ground raise his

right arm like I did at Sciota.

Q. You didn't mention that before?

Mr. Heyl: State all you can state about it.

A. I saw one man raise his arm or make a motion of throwing, and I ducked behind the boiler head.

Q. Did he throw with his right or left hand?

A. Right hand.

Q. You don't even know those fellows that you saw were pickets?

A. No, sir.

Q. On this trip to Effner, Indiana, you say a man by the name of Leasure was fireman. What is his first name!

A. I don't know.

Q. Where does he live?

A. I don't know that.

Q. How long had he been in the employ of the T. P. & W. on December 31, 1941?

A. I don't know that.

Q. Do you know what his work was before he became a fireman?

A. No, sir.

Q. Do you know whether he had ever been a fireman on any other railroad or not?

A. No, sir.

Q. This man that you say was an engineer, Compton, do you know what his first name is?

A. No.

Q. What was he before he was that?
 A. An engineer on the Santa Fe.

234 Q. Do you know when?

A. No, sir.

Q. Where does he live?

A. I don't know.

Q. Where does Leasure live?

A. I don't know that.

Q. How long had Compton been in the employ of the T. P. & W. prior to December 31, 1941?

A. I don't know.

Q. Jacob Armstrong, you say that day was conductor?

A. Yes, sir.

Q. Where does he live?

A. I don't know.

Q. What was his work prior to becoming a conductor on that date?

A. I don't know. He told me it was in train service on various other railroads.

Q. Lyndal Douglas, brakeman!

A. Yes, sir.

Q. What was his work before he became a brakeman that day?

A. I think he worked on the "rep" track.

Q. He worked on the "rep" track for the T. P. & W., is that right?

A. Yes, sir.

Q. Where does he live?

A. East Peoria, I think. I don't know.

Q. And this man Handley, do you know his first name?

A. No, sir.

Q. Where does he live?

A. I don't know that.

Q. Did he act as brakeman that day?

235 A. Yes, sir.

Q. Or student brakeman?

A. Student brakeman, I guess you would call it.

Q. What had he done before he became a student brakeman on that day?

A. I don't know.

Q. How long had he been in the employ of the T. P. & W. before December 31, 1941?

A. I don't know that.

Q. Now, this incident you referred to at Fairbury, Illinois,—

A. Yes, sir.

Q. -you don't know for sure whether that derail was thrown, of your own knowledge?

A. It had to be thrown.

Q. You didn't see it?

A. I didn't see anybody throw it.

You don't know who did it, if anybody there-

Mr. Heyl: He said he didn't know.

It might have been a member of the train crew on your train, as far as you know?

No. .9

Q. How do you know?

I lined the switch, and I rode the engine from behind, and-

Now.

Mr. Heyl: Quit breaking in on him! The Court: What is the question?

(Question and answer read by reporter.)

-I was the last man. After I had thrown the derail and had passed away, I was the last man out. Q. Did you at all times have under your observa-

tion the men in the caboose?

We left the caboose at the other end of town.

They were spotting the cars?

Mr. Heyl: He said the caboose was at the other end of town.

The Court: He may answer. Just a moment!

(Question read by reporter.)

The Court: You mean by that were to spot cars?

Mr. Knoblock: That's right. The Court: He may answer.

A. No.

Q. Who did spot the cars?

A. The conductor and myself.

Describe to us how you were able to watch that derail while you were spotting ears.

I didn't watch the derail while I was spotting the

cars.

Q. How do you know it wasn't some other member of your own train crew that might have thrown that switch back?

The derail was west of me, and all the other members A. of the crew were east of where we were working.

That is just your presumption, isn't that right? Q.

- A.

You never had them under your observation all the Q. time?

The other brakemen were through town. We left A. cars through town;

Q. You don't know where they were until you got back there, do you?

They weren't up around that derail, I know.

Q. How do you know? A. I didn't see them.

237

That is the reason you have assigned, isn't it?

- Yes, sir. A.
- You say when you got back to Washington, Illinois, a rock hit the engine cab, is that right?

Yes, sir. A

Q. You don't know who threw that?

A. No. sir.

Q. You didn't even see the people that threw that?

A. No. sir.

You didn't even see any fellow or shadow raise his Q. arm and throw that, did you?

A. No, sir.

Q. At Farmdale you say something hit the tender?

A . . Yes, sir.

. Q. How far back is the tender from the engine?

A. Directly in back.

- In feet, I mean, to where you would say it struck on the tender.
 - It sounded like it was about three or four feet back.
- What it was that hit the tender there you don't know?

A. No, sir.

The object that hit the tender, you don't know whether it was thrown or propelled in some other manner?

No. sir.

Q. You didn't see who did it; or what did it?

·A. No. sir.

What type of roadbed is there over around Wash-Q: ington, Illinois?

Through Washington itself is gravel ballast:

Q. And quite frequently, in traveling over that, 238 particles of that ballast is thrown up and strike the cars and causes a sound?

I have never seen any.

Q. You never did?

No. A.

Mr. Knoblock: That's all. The Court: Is that all?

Q. On this train to Effner, Indiana, you not only had the men carrying guns on the train, you also had a special agent following the train along the hard road, didn't you?

Mr. Heyl: I want to object to the question as assuming

the men on the train carried guns.

The Court: I understood him to say they did have guns.

Yes, sir, the special agents. A. (Question read by reporter.)

Q. In an sutomobile!

Mr. Heyl: I want to make the further objection it is not shown this man had anything to do with the direction of any man, or the employment of any man.

The Court: I understand that.

Was there an automobile going down the road?

A. I couldn't say.

The Court: Representing the company. You don't know!

A. I don't know.

The Court: What else? Mr. Knoblock: That's all.

239Redirect Examination by Mr. Heyl.

Q. I want to ask you, Mr. Witness, with reference to the incident at East Peoria near the Nickel Plate crossing at the viaduct.

. A. Yes, sir.

Q. You stated you saw a man draw his right arm back to throw something?

A. Yes, sir.

Where was that man with reference to the place you observed pickets?

Mr. Knoblock. He later testified he didn't know there

were pickets.

The Court: Where he observed men? Where was he with reference to where he observed men?

A. He was out in front of five or six of them, standing out in front.

Where were the five or six and this man with reference to the place where you observed pickets?

A. I observed pickets several times just off on the curb line there.

Is that where these men were?

A. Yes. sir.

On this Fairbury incident you were asked with reference to the position of the other men on the train while you were switching there and discovered this derail.

A. Yes, sir. Q: Where did you leave the other men?

A. We came down through town, and we left three cuts of five cars each between the streets so we wouldn't block any streets. Two of those men were behind with those cuts.

. Q. How far were those brakemen from the place

240 that you were switching at this elevator?

A. I would say the nearest cut was at least a block away.

Q. Who were the trainmen with you at the time of the derail?

A. Armstrong, conductor Armstrong and myself.

Q. Where was he?

A. He was up at the elevator. Q. Standing at the elevator?

Q. Standing at the elevator?A. Standing at the elevator.

Q. Where did you ride?

A. I stood—I was on the ground between the elevator and the engineer. I was relaying signals.

Q. Did you see Armstrong during the time you were there?

A. Yes, sir.

Q. Did he go out to the derail?

A. No. sir.

Q. Were there any other employees of your train at or near the place where this derail occurred?

A. No, sir.

Mr. Heyl: That's all. The Court: Is that all?

Recross Examination by Mr. Knoblock:

Q. When you say there were no other employees near that derail, you mean as far as you saw?

A. No. sir.

241 Re-redirect Examination by Mr. Heyl:

Q. When you returned to the place where you left these other cars, what did you find with reference to the location of the other employees? The brakemen?

A. They were there.

Q. Where you left them?

A. Yes, sir.

Q. That is true of all of them, isn't it?

A. Yes, sir.

Mr. Heyl: That's all.

The Court: We will be at recess for about five minutes. (Recess.)

EDGAR TUCKER, called on behalf of the plaintiff and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Edgar Tucker.

Q. How old are you?

A. Thirty-two.

Q. Where do you live?

A. 100 Shadoway/Drive, East Peoria.

Q. What is your business or occupation?

A. Machinist.

Q. And where are you employed?

242 A. Toledo, Peoria & Western Railroad.

Q. How long have you been employed by this plain-

A. Twelve years.

Q. How long?

A. Twelve years.

Q. Now, were you connected in any way with the train on December 30, 1941, known as extra 43 east?

A. Yes.

Q. Was the witness McKinney who just testified on that train?

A. Yes.

Q. What position did you occupy on the train? What capacity?

A. Fireman.

Q. Fireman?

A. Yes:

Q. Now, what happened on December 30, 1941, at about 6:40 P. M. at or near the Nickel Plate crossing?

A. There were rocks thrown at the engine as we came under the East Peoria viaduct at the Nickel Plate crossing.

Q. Which way were you proceeding?

A. We were going east.

Q. Did you make an observation of the men that were there?

A. That's right.

Q. Where were these men?

A. They were standing—let's see—it would be the north side of the tracks close to the viaduct.

Q. Did you recognize them either by knowing their names or as former employees of the T. P. & W.?

A. I recognized one of them, yes.

Q. Whom did you recognize?

243 A. William Christoff.
Q. William Christoff?

A. Yes.

Q. One of the defendants in this case?

A. Yes.

Q. What did you see him do?

A. He threw a rock or piece of iron.

Q. Did that strike the engine?

A. Yes.

Q. Where?

A. Left side of the cab before the fireman's arm rest.

Q. What was Christoff before?

A. Engineer.

Q. For the T. P. & W.?

A. Yes.

Q. Mr. Christoff, will you please stand up? (Person named rises.) Is that the man you saw throw at the engine?

A. Yes, it is.

Q. Were there any other men with him?

A. Yes.

Q. Did you recognize the other men?

A. No.

Q. Did you recognize them with reference to their former employment?

A. No.

Q. What time was it that you saw Christoff throw at this engine?

A. Well, it was around 6:40, 6:45, as we were coming under.

Q. Did you see him, Christoff, William J. Christoff, at any other time around the same place—

A. No.

244 Q. —as a picket? —

A. No.

Mr. Heyl: I think that is all with this witness.

The Court: Cross examine!

Cross-Examination by Mr. Knoblock.

Q. You say that your trade is that of a machinist?

A. Yes.

Q. You have been a machinist for twelve years?

A. No.

Q. You worked for the T. P. & W. for twelve years?

A. Yes, sir.

Q. What was your first work there?

A. Laborer.

Q. And you say you live at 100 Shadow Drive?

A. Shadoway.

Q. Shadoway Drive, East Peoria?

A. Yes.

Q. And on this extra 43 east train on December 30, 1941, is that the train that went to Effner, Indiana?

A. No.

Q. Where did that train go to?

A. It went to Hamilton, Illinois, and Keokuk, Iowa.

Q. And did you go down there on that train on the 29th!

A. Yes.

Q. And going out it was extra 43 west, is that right?

A. Yes.

Q. You noticed nothing of any kind or character on the entire trip west?

245 A. We were stoned a little around Sciota, but I

Q. Of your own knowledge you know nothing about that?

A. No.

Q. Where was your place on this train?

A. Fireman on the engine.

Q. And then, as you came back on the 30th, do you, of your own knowledge, know of anything unusual that happened until the Nickel Plate crossing?

A. No, I don't know of anything except that.

Q. Where is that place that you claim this took place with reference to the viaduct?

A. It's over the railroads at the Nickel Plate crossing in East Peoria.

Q. Can you describe the Nickel Plate crossing to us

more definitely with reference to streets?

A. It's on what is known as East Washington Street in East Peoria, 1100 block, and this viaduct is Route 150 out of East Peoria.

That is the one you cross over when you go to Morton?

A. Yes.

How close was Christoff standing to the train? à Q.

Oh, I should judge twenty feet.

And it was dark? .

Rather dark, yes. Or was it just partially dark? Just getting dark?

A. There is a light there, lights from the street light there under the viaduct.

Q. At 6:45, that was evening that you came back?

A. Yes.

Q. You say there is a street light? A. Yes, there is a light there. I don't know just where it is located, but it was showing on those fellows.

Q. You didn't recognize anyone else as even former employees of this plaintiff?

No. A.

Whom did you talk to about your testimony here prior to coming into the court room? Did you talk to anvone?

A. No. sir.

Q. You haven't discussed this with anyone prior to your coming in here?

No.

Your attorneys didn't know what you were going to testify to before you came on the stand?

Mr. Heyl: I object as a conclusion.

The Court: He may answer.

Mr. Heyl: I want-

The Court: Just a minute! What is the question?

(Question read by reporter.)

No one knew what your testimony would be prior to your taking that stand?

Mr. Heyl: I object to that.

The Court: Objection sustained to that.

Q. Did you disclose to anyone what your testimony would be prior to your taking this witness stand?

A. I reported to my foreman the circumstances as they are on the day they happened, yes.

'Who was your foreman?'

A. Mr. Hunter is the man that I reported to.

Q. Is he an official of the T. P. & W.?

A. I believe he is a clerk.

Where is he stationed?

In East Peoria.

Where does he live?

A. I don't know.

The Court: Do you know where he lives?

A. No, I don't.

Which side of the crossing did you say you saw Christoff standing?

North.

The train was proceeding east at the time? Q.

A. Yes.

The fact is, isn't it; the light to which you refer is on the south side of that track?

. A. No.

How far is that street light away from the track?

I would say it was about the same distance Mr. Christoff was standing.

I prefer that you reduce that to feet.

Well, it's hard to guess. * A.

What is your best judgment?

I would say twenty feet.

Q. He was standing right under the street light?

Not right under the street light; standing to the east of the street light.

How far!

About fifteen feet. A.

Mr. Knoblock: That's all.

The Court: Anything else with this witness?

Mr. Heyl: Just one minute, please!

Redirect Examination by Mr. Heyl.

Mr. Tucker, did you make an affidavit and furnish it to the plaintiff of the facts that you have testified to in this case?
A. Yes, I made an affidavit when I came in.

When you came in?

Off the run, yes.

. Q. You haven't talked to Mr. Elliott or myself, have you?

A. No.

Q. But you delivered an affidavit to one of the officers of the company, didn't you?

Yes.

Q. That is right, isn't it?

A. Yes.

Mr. Heyl: That's all.

Trial Recessed at 12:15 o'clock P. M.

Trial Resumed at 2 o'clock P. M.

249 EDMUND P. OWEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Edmund P. Owen.

Q. Where do you live?

A. Route 2, Washington, Illinois.

Q. What is your age?

A. Twenty-nine.

Q. What is your business or occupation?

A. Blacksmith.

Q. And where are you employed?

A. Toledo, Peoria & Western Railroad.

Q. How long have you been employed there?

A. Over eight years.

Mr. Heyl: A little louder, please.

A: Over eight years.

Q. On December 29, 1941, were you on extra 43 east?

A. I believe not. It was west,

Q. Is that the correct date? A. December 29? I believe it is.

Q. On extra 43 east, is that the train-

Mr. Knoblock: I object as having been asked and answered.

The Court: What train were you on December 29th?

A. On the 29th I believe I was on an extra west.

Q. In what capacity were you serving on that train? A. As a brakeman.

Q. Where were you riding?

A. In caboose R at the rear of the train.

Q. And do you know what happened near the Nickel Plate crossing?

A. Stones were thrown at the caboose,

Q. Do you know who threw the stones?

A. No, not there: I believe not. Q. What's that?

A. Not at that time; I believe not.

Q. Where were the men that you saw throwing stones?

A. At the Persimmon Street crossing.

Q. That was a later time?
A. That was at a later time.

Q. The train was traveling in which direction?

A. Westward.

Q. East or west?

A. Westward.

Q. What time did you reach the Persimmon Street crossing?

A. Approximately 10 o'clock.

Q. In the morning?

A. A. M.

Q. Will you tell what occurred there?

A. Rocks and stones hit the caboose, and one window was broken out.

Q. Did you see the persons who threw the stones?

A. I saw three men.

Q. Where were they?

A. They were standing on the—by the side of the right-of-way.

Q. And do you know their names?

251 A. I recognized one as Mr. Gimming.

Q: John J. Gimming?

A. That's right; and I recognized another one as Mr. Garland Brown.

Q. Garland F. Brown?

A: Garland F. Brown; and another one as Mr. William Brown.

Q. Are these men in the room? Mr. Gimming and Mr. Brown? (Persons named rise.) Are those the men?

A. Yes, sir.

Q. Which &s Mr. Gimming?

- A. The largest one.
- Q. Back at the rear?
- A. That's right.
- Q. Which is Garland F. Brown?
- A. The one in front.
- Q. And the other one is William L. Brown?
- A. That's right.
- Q. Where were they with reference to the train when these stones were thrown?
- A. You mean the location where the men were? Well, approximately twenty feet on the right side of the train as we were going west.
 - Q. And did they say anything to you?
 - A. I never heard anything, no, sir. Q. Did they do anything further than thrown stones?
 - A. Not at that point.
 - Q. Did they later?
 - A. In several places.
 - Q. Where did you next see these men?
- A. Underneath or at the crossing close to the Cedar Street viaduct some more windows were broken out of the caboose there.
- 252 Q. Will you give the names of the men that you saw there?
 - A. Those same men.
 - Q. Anyone else?
 - A. No, I believe not.
- Q. Now, when was the next time that you had some trouble?
- A. At the telephone booth at Hollis, as the caboose went by there the same men threw at us again.
- Q. On that morning did you see William J. Christoff and Gerald A. Brown?
- A. I saw them around the railroad, but I never saw them throw.
 - Mr. Knoblock: Who are those men?
 - Mr. Heyl: Gerald A. Brown and William J. Christoff.
 - Q. Where did you see these men?
- A. I saw them at Hollis, and then I saw Mr. Underwood in his car as he was driving alongside the train.
 - Q: Where?
 - A. Just the other side of Hollis.
 - Q: Where was.Mr. Christoff?
 - A. Mr. Christoff was at Hollis.

Q. What was he doing?

- A. At the time the caboose went by, he was just standing there.
 - Q. Was anyone with Underwood in his car?

A. I didn't recognize anyone.

Q. Were there some other people in the car?

A. Yes.

Q. What did they throw at you or at the train at Hollis near the telephone booth?

A. Well, there was several bricks came in the caboose,

and one large rock.

Q. About how large was the rock?

253 A. As large as your fist, or a little larger.

Q. The bricks?

A. Half-bricks.

Q. How many of them came in the caboose?

A. I had fourteen at the end of the trip.

Q. Where did you gather up the fourteen?

A. At different times along the line. Q. From the time you left Peoria?

A. Until Canton.

Q. Until you got to Canton? .

A. Yes.

Q. Were there other bricks or stones thrown at the train other than you found in the train?

A. They hit the car and fell back on the ground, yes, sir.

Q. Now, were there some other men with the men that you have identified and named at these various places?

A. I couldn't say.

Q. Did you see any other men with them?

A. Well, no, I wouldn't say.

Q. Did you see William L. Brown that day?

A. William L. Brown that day?

Q. Yes.

A. Yes, he was throwing bricks at me.

Q. Was he How do you identify him? Did you know him from before?

A. Oh, yes, sir. Yes, sir.

Q. What about the method of his travel along the road! Did you see him traveling!

A. Yes, he was in an automobile that I had saw him 254 drive before, and he drove along the highway by the side of the railroad tracks.

Q. At what point?

A. Well, between- The other side of Hollis.

Q. Anyone with him?

A." Yes, there were some other men in the car.

Q. Do you know who they were?

A. No. I couldn't say.

Q. Were you close enough to identify them?

A. No, not at that time.

- Q. How was Gerald L. Underwood traveling?
- A. He was in a car that I have saw him drive before.
- Q: Do you remember the kind of a car it was?

A. Almost a new Pontiac?

Q. Do you remember the color of it?

A. I believe it's red.

Q. Is that the car that he used for some time in driving to and from work?

A. Yes, sir.

- Q. Now, will you tell me who was the engineer on that train?
 - A. Who the engineer was? It was Mr. Ward.

Q. Larry C. Ward?

A. That's right.

Q. Who was the conductor?

A. Mr. Clarence Carnarius.
Q. And Clif Harvey and Bert Taylor were also on there?

A. That's right.

Q. Now, what damage, if any, resulted to this caboose by the throwing of these rocks?

255 A. Most of the windows were broken, and the window sash was broken. That's about all.

Q. How about the locomotive? Did you observe any stones being thrown at the locomotive?

A. No.

Mr. Heyl: I can't hear you.

A. No, sir.

Q. How many cars were on that train?

A. I believe we had twelve.

Q. Now, after you passed the telephone booth at Hollis, you continued west to Canton, did you not?

A. That's right.

- Q. What happened about half a mile west of the Hollis telephone booth?
- A. At a hard road crossing there were some more stones and bricks thrown in and at the caboose; and another

window was broken on the left hand side of the caboose there.

Q. Is that the road that you cross that leads to Pekin across the dike, or is it below that?

A. It goes to Pekin, I believe.

Q. That is the one you are speaking of now?

A. Yes.

Q. Where is the telephone booth?

A. About half a mile toward Peoria from there.

Q. This Pekin road?

A. That's right.

.Q. Do you know where the Wheeler crossing is?

A. Yes.

Q. Where is that with reference to the Mapleton water tank?

256 A. It's about a quarter of a mile eastward.

- Q. And what happened at the Wheeler crossing?
- A. Some more bricks and stones were thrown at the caboose.

Q. By these same men?

A. Well, I didn't see the men there at that crossing.

Q. You weren't able to identify them?

A. That's right.

- Q. How about Glasford, Illinois? What happened there?
- A. At Glasford there were some rocks and bricks thrown at the caboose by these same men.

Q. Did you see these men there?

A. Yes.

Q. Will you tell the court the names of the men that you recognized as being the ones that were throwing at the train while it was at Glasford?

A. I recognized Mr. Gimming and Mr. William Brown

and Mr. Garland Brown.

Q. Now, did you see William L. Brown as you approached the station platform at Glasford?

A. Yes.

Q. Were the others with him?

A. They were farther back at the end of the platform.

Q. What did you do there at the station?

A. I got out on the rear platform of the caboose to pick up some orders.

Q. Was the train moving or stopped?

A. It was moving.

Q. Was there someone out there to hand it to you?

A. The operator.

257 Q. The station operator?

A. Yes, sir.

Q. What happened as he tried to hand you that order?

A. William Brown threw a rock at me.

O. That is William L. Brown?

A. That's right.

Mr. Heyl: Will you stand up, Mr. Brown?

(Person named rises.)

Q. Is that the gentleman who threw the rock at you while you were trying to get the order?

A. That's right.

Q. What did you do?

A. I ducked.

Q. Then what did you do?

A. Then I reached out and took the orders.

Q. Then what?

A. Then I dashed back into the caboose.

Q. What happened after you got in the caboose?

A. A rock hit the door.

Q. Did you see William Brown at the rear of the train?

A. After it had passed? Yes, sir.

Q. Was the other Mr. Brown there?

A. The other Mr. Brown and Mr. Gimming.

Q. Where were they with reference to William L. Brown?

A. About fwenty feet west.

Q. These two men you have just identified as being the ones that responded to their names and stood up in the court room, they were former employees of this railroad, were they?

A. That's right.

258 Q. Now, what happened when you arrived at Can-

A. Just before we crossed the C. B. & Q. railroad tracks, some more bricks and stones were thrown in and against the caboose.

Q. What happened to the caboose? Any damage to the caboose?

A. I believe most of the windows were already broken.

Q. How about the lower window glass on the right side? Was that broken there or at Hollis?

A. Both places I believe they were broken.

Q. Did you see the men at Canton, these same men? These three you have identified?

A. Yes, sir.

- Q. Were there any others there?
 A. I didn't recognize anyone else.
- Q. When you arrived at Canton, were those three men there by the station or at the C. B. & Q. crossing.

A. That's right.

Q. What did they do?

- A. They threw the bricks at the caboose, and stones.
- Q. Did you see where they were obtaining the bricks and stones they were throwing at this train?

A. No.

Q. Do you know how they traveled from Glasford to Canton? Did you see any automobiles at Canton?

A. No. sir.

Q. You saw them as you arrived there?

A. As we went by there.

Q. Did you stop at Canton?

A. No, sir.

Q. They threw at the train as it was passing?

259 A. Went by, yes.

Q. Now, when you returned—You went to Hamilton with that train, didn't you?

A. That's right.

Q. And returned the same day, or the following day!

A. The following day.

Q. Now, in this train that you have described were there any cars that you took into Keokuk, Iowa?

A: Yes, sir.

Q. How many, if you recall?

A. I believe there were two.

Q. That you took from Peoria into Keokuk? .

A. That's right.

Q. When you came out the next morning, did you return some cars?

A. From Keokuk? Yes, sir.

Q. Do you remember what they were?

- · A. No. There were several; about seven, I believe.
- Q. They were taken from Keokuk, Iowa, into Illinois, on this railroad, were they not?

A. That's right.

Q. Did anything happen on the way into Peoria from Hamilton?

Not until we got into Peoria.

And at what point?

At the Persimmon Street crossing. A.

What time, about, did you arrive there? Q.

About 5:15, 5:20. A.

And did your train stop there? Q.

Yes, sir. A.

What happened? Just as the train started, there was quite a 260bombardment of bricks and stones that hit the caboose and hit some window glass, and then as we started the lights went out of the caboose, and that is all that happened there.

Do you know what caused the lights to go out?

The wind blew through the caboose when they werebroken out again.

Did they break out the rest of the windows in the

caboose at that time? . .

A. Not the rest of them: There was two that wasn't broken when we arrived in the yard.

The rest were all broken?

A. Yes, sir.

Q. How many lights are there?

There are six lower ones and eight in the cupola, and there was two in the cupola that wasn't broken and two lower ones that wasn't broken.

The rest were all broken out? Q.

A. That's right.

Did you identify the men or recognize the men that threw the stones there?

.A. No, sir.

What was the next thing that happened? Q.

It was at the Franklin Street crossing. Some more · A. stones were thrown.

That is the old Chestnut crossing! Q. -

At the end of the river bridge. · A.

At the Union Depot? Q.

Across the river on the East Peoria side. A.

261What happened there? Q.

Some more stones were thrown at the caboose.

Q. And did anything happen to the caboose?

A. Well, no, sir, 1 don't believe so,

Q. Then what happened later?

Then as we went underneath the viaduct at the

Nickel Plate crossing some more stones were thrown at the caboose.

Q. Where did they come from, if you know?

A. No, I couldn't say. They just hit the side of the caboose.

Q. You didn't see any person?

A. No, it was dark.

Q. What time did you arrive at the yards?

A. I believe it was 5:45, or near that.

Q. Did you have some of the cars that you took at Keokuk in that train?

A. Yes, sir.

Q. Did you go out on the next day on that same train!

A. No, sir.

Q. In either direction?

A. No, sir.

Q. When was the last time you saw William J. Christoff that day! The day you went out, or the day you came back! When did you see him last!

A. The day I went out.

Q. And where was he?

A. At Hollis.

Q. That was the last time?

A. I believe it was, yes, sir.

Q. Was he with Gimming, Brown, Garland F. 262 Brown, and William L. Brown?

A. Well, he was a few feet from them.

Q. Where did you see Gerald L. Underwood that day?

A. He was there where Mr. Christoff was.

Q. The same time?

A. The same time.

Q. . Did you see Herman Reiman?

A. I don't believe so.

Q. Did you see John Feuger?

A. No, I don't believe so.

Q: This Gerald L. Uunderwood and Christoff were both former employees of the company, are they?

A. Yes, sir.

Q. And defendants in this case?

A. I believe so.

Mr. Heyl: Is Mr. Christoff in the room, please? (Person named rises.)

Q. Is that the gentleman?

A. Mr. Christoff, yes.

Q. Underwood? Gerald L. Uunderwood?

A. Nes, sir.

Mr. Heyl: I think he has been up several times.

Cross-examine!

Cross-Examination by Mr. Knoblock.

You say you are twenty-nine years of age, Owen?

That's right.

And live at Washington?

A. Yes, sir.

Note: The skip in numbering from page 163 to 170 263is merely typographical, and there are no missing pages.

Q. And you are a blacksmith? 263a.

A. Yes, sir.

You were a blacksmith for eight years at the T. P. & W.?

A. No. sir.

How long have you been a blacksmith at the T. P. Q. & W. ?

About a year. A.

And what were you before that? Q.

A. Car inspector.

What were you before that? Q.

Repair track foreman. A. And before that what were you? Q.

A. Car repair.

And what was your first work at the T. P. & W.?. Q.

A. Laborer.;

Had you ever been a brakeman on a train before December 29, 1941?...

No. sir. Α.

And you went out that day as a brakeman? Q_{\cdot}

Α. Yes, sir.

You didn't even go out that day as a student brakeman, is that right?

That's right.

How many trips had you made prior to going out as a brakeman on that date?

None.

Is that right? /None?

A. Yes sir.

Q. How many have you made since that date?

A. One.

Q. Where did you go on that occasion?

263b A. That same train.

Q. Where?

A. To Keokuk.

Q. Keokuk, Iowa? What type of work are you doing now?

A. Blacksmith.

Q. You are back as a blacksmith now?

A. Yes, sir.

Q. On this trip you are telling about on the 29th of December, 1941, you rode in the caboose on that—on the rear of the train, is that right?

A. That's right.

Q. Now, this train that you went on west December 29, who all did you say was on that train?

A. 'As employees, you mean?

Q. I would say who was on there.

- A. There was Mr. Clarence Carnarius, Mr. L. C. Ward.—
 - Q. What was Carnarius doing on the train that day?

A. Conductor.

Q. Where was Larry C. Ward?

A. He was an engineer.

Q. All right! What was Clif Harvey doing on that train?

A. Brakeman.

Q. Bert Taylor, what was he doing?

A. Fireman.

Q. A fireman? Now, who else was on the train?

A. That's all, I belive.

Q. Wasn't there some special agents on that train?

A. Yes, that's right.

Q. And what were their names?

Q. James? That was his last name?

A. That's right.

Q. Do you know what his first name was?.

A. No, sir.

Q. Where was he from?

A. I don't know.

Q. He carried a gun, didn't he?

A. I believe he did.

Q. Do you know what calibre?

A. No, sir.

Q. It was loaded?

A. I don't know.

Mr. Heyl: I object unless he saw a gun.

The Court: He said he saw the gun.
Mr. Heyl: Not cross-examination.

The Court: He said-

Q. How many special agents rode in the caboose?

A. One:

O. That was this man James?

A. That's right.

Q. How many other special agents were on this train?

A. One.

Q. Where did he ride?.

A. In the engine.

Q. What was his name?

A. I believe it was Kane.

Q. King?

A. Kane.

265. Q. Where is he from?

A. I do-not know.

Q. He carried a gun, too, didn't he?

'A. I don't know.

Q. You don't know that?

A. No, sir.

Q. How many guns did James earry !

A. I just saw one.

Q. And did he go all the way over to Hamilton with

A. Yes, sir.

Q. Went over to Keokuk with you?

A. Yes, sir.

Q. Both those special agents didy.

A. Yes, sir.

Q. And they came back with you?

A. Yes, sir.

Q. Did you at any time cause a warrant for the arrest of William L. Brown for throwing a rock at Glasford to be issued?

A. I beg your pardon! I didn't understand the ques-

Q. Did you ever swear out a warrant for William L. Brown for throwing a rock at you at Glasford?

Mr. Heyl: I object. It is immaterial.

Mr. Knoblock: It is competent under the Norris-

The Court: 'I don't think it would be material, but he may answer and get all the record we have. Did you swear a warrant out?

A. No. sir.

Q. Did you cause any warrants to be sworn out for Gimming?

266 A. No, sir.

Q. For Garland Brown?

A. No, sir.

The Court: I think we can save a lot of time. Did you swear out any warrants for anybody?

A. No, sir.

Q. On December 29, 1941, as you started out, you men tioned something about the Nickel Plate crossing. Was there anything that happened at the Nickel Plate crossing as you went out of Peoria?

A. Yes, sir.

- Q. Who did you see there? A. I didn't recognize anyone.
- Q. I see. And whatever was done there, you don't know by whom it was done?

A.: No, sir.

Q. And you wouldn't know whether it was done by any of the employees of the T. P. & W. or not, is that right?

A. Yes, sir.

Q. Now, what time did you leave the yards that day: A. I believe it was 9:30, or approximating 9:30.

Q. What time? Morning or afternoon?

A. Morning.

Q. What time did you arrive at the Persimmon Street

A. Well, about 10 o'clock in the morning.

Q. And there you say you saw some men standing on the right side? On the side of the right-of-way, is that right?

A. That's right.

Q. About twenty feet from the side of the train?

A. Approximately.

267 Q. And those men, three of those men you saw, were John Gimming, Garland F. Brown and William Brown?

A. Yes, sir.

Q. And they said nothing to you on that occasion?

A. I heard nothing.

Q. You say they threw rocks, and you saw them do it?

A. Yes, sir.

Q. What did the special agents do when they did that?

A. Nothing.

Q. He stayed in the caboose?

A. Yes, sir.

Q. Then you say there is another crossing that is close to the Cedar Street viaduct, is that right?

A. That's right.

Q. You say those same three men threw rooks?

A. Yes, sir.

Q. You saw them do that?

A. Yes.

Q. Was the special agent in the caboose when they did that?

A. Yes.

Q. What did he do?

A. Nothing.

Q. Did he stay in the caboose?

A. Yes.

Q. Was there any other man present on those occasions?

A. I never noticed anyone.

Q. Those are the only three you saw?

A. That's right.

Q. Who else was riding with you in the caboose except the special agent?

268 A. There was at that time, I believe, the conductor.

Q. What was his name again?

A. Mr. Carnarius.

"Q. Anybody else besides you, the special agent and Mr. Carnarius?

A. I believe that's all:

Q. Now, then, you mentioned about the telephone booth at Hollis, and who do you say threw rocks on that occasion?

A. The same man.

Q. That is Gimming, Garland F. Brown and William Brown, is that right?

A. Yes.

Q. Anybody else?

A. I never saw anyone else.

Q. Throw, you mean?

A. Yes.

Q. Or didn't recognize anybody else there!

A. I didn't recognize anybody else there.

Q. At the telephone booth at Hollis, you never saw anybody else there at all bat Gimming, Garland F. Brown and William Brown?

A: That's right.

Q. Didn't I understand you to say on direct examination you saw Christoff and Underwood there?

A. At the telephone both at Hollis? That's right.
Q. Didn't you say there wasn't anybody else there?

Mr. Heyl: I object.

A. I thought you meant throwed at me.

Q. I asked you that specifically.

A. I beg your pardon!

Q. Was the special agent there in the caboose with you at the time?

269 A. Yes.

Q. What did he do?

A. Nothing.

Q. And you don't know what went on at the front end of the train, do you?

A. No, sir.

Q. Now, then, you say again when— What time did you get to Hollis?

A. About 10:45, I believe.

Q. 'In the morning?

A. Yes, sir.

Q. And did you stop there?

A. The train stopped there, yes, sir.

Q. About how long?

A. About five minutes, or something like that.

Q. And when you say you went across the hard road about a mile west of Hollis? Is that right?

A. About half a mile.

Q. Isn't that what I said? Half a mile?

Mr. Elliott: You said a mile.

Q. Half a mile west of the Hollis station you crossed the hard road?

A. That's right

O. You say more rocks were thrown?

A. Yes, sir.

O. Who threw theni?

A. I don't believe I saw that.

Q. You don't know who threw those?
A. No, sir.

270 O. In fact, you didn't see anybody there!

A. That's right.

C. What did the special agent do on that occasion?

A. Nothing.

Q. Then at the Wheeler crossing near Mapleton, what time did you arrive there?

A. Approximately 11 o'clock, or somewhere in there.

Q. That is in the morning?

A. In the morning, yes, sir.

Q. And you didn't see any of the men throwing there?

A. No. sir.

Q. You didn't see any men around there at all, is that right?

A. Yes, I saw a glimpse of somebody as we went by,

but I couldn't say who it was.
Q. I see. Now, at Glasford you say there you saw
Gimming, William Brown and Garland Brown!

A. Yes, sir.

Q. And the only one that threw at you there was William L. Brown?

A. Yes, sir.

Q. And was the special agent in the caboose at that time?

A. Yes, sir.

Q. What did he do, if anything?

A. Nothing:

Q. You weren't hit, were you?

A. No, sir.

Q. There were no verbal threats made to you at any time, were there?

A, No, sir.

Q. At Canton you didn't see any men around there at all, did you?

271 A. Yes, sir.

Q. Who?

A. Mr. Gimming, Mr. Brown and Mr. Brown.

Q. Mr. who?

A. Gimming, Brown and Brown.Q. Did you see them throw there?

A. Yes, sir.

Q. Was the special agent with you on that occasion?

A. Yes, sir.

Q. What did he do, if anything?

A. Nothing.

Q. Now, on your return to Peoria the next day from Hamilton, you say nothing happened until you got to the Persimmon Street crossing in Peoria; is that right?

Yes, sir.

At about 5:15 in the evening?

A. I believe so.

It was dark, was it?

A., Yes, sir.

Q. A. You didn't see anyone throwing there?.

No, sir.

And no threats were made on that occasion?

A. No. sir.

Q. Then at the Franklin Street crossing here in Peoria. is that right?

A. At the other end of the Franklin Street bridge in

East Peoria.

On the Tazewell County side, is that right? Q.

Yes, sir.

You didn't see anybody throw anything there? A., No, sir.

Q. At the Nickel Plate crossing at the viaduct, that was about when? About what time of the evening? O

About fifteen or twenty minutes later. You didn't see anybody throw anything there?

A. No. sir.

Did you make any report to your superiors who threw these rocks at you?

A. Yes, sir.

Q. You made the report that night or the next day?

A. That night.

Whom did you report it to? A. To I reported it to I believe the trainmaster's I do not know. He was working in the trainmaselerk. ter's office, Mr. Carroll Payne.

Carroll Payne?

Yes, sir.

And did you ever go on this train toward the east!

A. No. sir.

Q. At no times did you see any of these men you have named here carry any guns, did you?

No, sir.

You never saw them carrying any clubs, either, did von?

No. sir. Α.

You never saw anything unusual as you passed through Sciota that night going west, did you?

No. sir.

* Q. Were you offered any bonus of \$10.00 a day by the plaintiff here in this work?

A. Yes, sir.

273 Q. You have Len?

A. Yes, sir.

- Q. And did you get paid? A. Well, not yet, no, sir.
- Q. It has been promised to you?

A. That's right.

Q. And was it promised to you both the days that you went over to Hamilton and came back?

A. No.

Q. Who made that promise to you?

A. The superintendent, Mr. Best.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. This train that you have been speaking of, was that on December 31?

A. Yes, sir.

Q. The day before New Year's?

A. Yes, sir.

Q. That is the date you are discussing in this train west?

A. Yes, sir.

The Court: Is that all, gentlemen?

Mr. Heyl: That's all. The Court: Is that all?

274 CLARENCE L. CARNARIUS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Clarence L. Carnarius.

Q. And where do you live, Mr. Carnarius?

A. At 228 Gilbert Street, Peoria.

Q. What is your age?

A. Forty-five.

Q. What is your business or occupation?

A. I am a lead car inspector.

Q. How long have you been employed by the T. P. & W.?

A. About fourteen years.

2. In what various departments?

A. Well, I started there as a chief clerk to the master mechanic, and then I was general car foreman, trainmaster, and now I am lead car inspector.

Q. Is that your present occupation?

A. Yes, sir.

Q. Were you on the train number 43, extra east, on December 30, 1941?

A. Yes, sir.

Q. And how far did you travel with that train?

A. From Hamilton to Peoria.

Q. Hamilton, Illinois, to Peoria,-

A. Uh-huh.

Q. —is that right?
A. Yes. sir.

275 Q. Do you recall what happened at or near the Nickel Plate crossing on the west end of the Peoria yard as that train was either coming or going into the yards?

A. That was there near the viaduct. There were some men, former employees, strikers I would call them. One of them threw a rock or a brick at the cab.

Q. At what?

A. At the engine cab.

Q. Where were you?

A. I was in the engine cab.
Q. And which side of the engine did he hit?.

A. He hit the left side.

Q. That is the fireman's side?

A. Yes, sir.

Q. What was the size of the article that you observed!
If you know what it was, state.

A. Well, I couldn't say the size of that particular one.

I don't recall the size of it.

Q. Do you know what article it was? .

A. It was just a brick is all I could say about it. Q. Did you see the man that threw the brick?

A. No, I didn't see the man.

Q. Now, which way was the train moving when that occurred?

A. The train was moving east.

Q. On the return trip?

A. On the return trip to Peoria yard.

Q. That was on what day?

- A. On December 30.
- Q. December 30?

A: Yes, sir.

276 Q. On December 31, 1941, did you act as a conductor on an extra train west?

A. I did.

Q. What time did you leave Peoria?

A. About 9:57.

- Q. In the morning?
- Q. How far did you go!
- A. We went to Hamilton. Q. From East Peoria?
- A. We went to Hamilton, Illinois.
 Q. From East Peoria, Illinois?

A. From East Peoria, yes, sir.

Q. And then you returned, did you, from Hamilton, Illinois, to Peoria? East Peoria?

A. On the following day.

Q. That was on January 1,-

A. January 1,

Q. —1942? A. Yes. sir.

A. Yes, sir.
Q. Now, will you identify that train by the name of the engineer and the conductor? You were the conductor, weren't you?

A. Yes.

Q. The engineer !

A. The engineer was L. C. Ward.

Q. That is Larry Ward?

A. Larry Ward, yes, sir. Q. Now, at Swords' Siding, East Peoria, did anything happen there?

A. Yes. There were some of the strikers threw 277 quite a number of bricks at the engine cab. I was on the cab. We were waiting there for the bridge signal.

Q. Did anything happen to that train after you left the yards, and before you reached Swords' Siding?

A. There were rocks thrown at us at the Nickel Plate crossing there.

Q. Any of them get into the cab?

A. Yes, sir.

Q. What happened! Any windows broken?

A. A number of them broke the windows and did other damage, window frames.

Q. Were you in the caboose at any time on that train?

A. On that trip? I dropped off of the engine over in town just along the depot and let the train pull by me to make sure that we weren't having any trouble with the train, and I got on the caboose as it came by.

Q. That is while it passed the Union Station!
A. That is when it passed the Union Station.

Q. When did you get back on the engine?

A. I believe it was at the M. & St. L.—what we call "Iowa Junction".

Q. That is south of Peoria?

A. That's right.

Q. What happened after you left the station? I mean the Union Station.

A. Rocks were again thrown at us at the Cedar Street bridge.

Q. You left the station or the yards, I believe you said, at 9:30 that morning.

A. We were called for 9:30. We left at 9:57.

Q. The first place that you observed any throwing 278 of rocks was at the viaduct at the west end of the Peoria yards, was it not!

A. Yes, sir.

Q. And then the next place was East Washington Street, East Peoria!

A. What we call Swords' Siding!
Q. Is that the Swords' Siding!

A. The next place I recall of right now was at Swords' Siding, although there were times on this particular trip that I made notation of the time when it happened when we were particularly hard—when we received a large number of rocks or bricks.

Q. East Washington Street is in East Peoria, is it not!

A. Yes, sir.

Q. And that is near the crossing?

A. That's near what we call "P. & P. U. Junction".

Q. What happened there? A. I don't recall just now.

Q. Then West Washington in East Peoria would be at Swords' Siding?

A. We call it "Swords' Siding". That is where we

stopped for the signal.

Q. What happened at Persimmon Street? What happened further at the Swords' Siding that you haven't told us?

A. The next place I recall of at the present time is Cedar Street bridge.

Q. Let's get Swords' Siding first.

Mr. Knoblock: I submit he has gone over that. I object to the leading of the witness.

The Court: If you have anything to state in regard to that you haven't stated, state it.

Q. At the Swords! Siding!

A. Yes.

279 Q. Who were they?

A. Particularly there I noticed William Brown and Reiman. Those were the particular ones I noticed there that I recall. Further on—

Q. Let's stay at Swords'. William L. Brown and Her-

man Reiman?

A. Yes, sir.

Q. Are those the only two you recall now?

A. There were a number of others, but the bricks were flying so fast it was pretty hard, really, to say what was going on.

Q. Did you see these two men throw any bricks?

A. I did.

Mr. Heyl: Will Mr. William Brown and Reiman stand

Mr. Knoblock: I object. I think he should pick them out of the crowd. Let's see if he can identify them.

The Court: Do you know !'iose men ?

A. Yes, sir.

The Court: You say they were the men that were there?

A. Yes, sir.

The Court: I don't see any necessity of identifying anybody. We are just wasting a lot of time.

Mr. Heyl: They are defendants in this case.

The Court: If you know them and say they are the ones, that makes the issue.

Q. Were there others there?

A. There were others there, but as I say, I can't recall identifying them at that particular time.

Q. Were the others you observed—Did you identify

them as former employees?

280 A. Yes. I believe I can safely say that they were all. I didn't see any strangers there at that particular time.

Q. How many men were there?

I would say right at that particular time all I saw was about five or six men at that particular point.

Q. Did they have anything in their hands except stones."

or bricks?

I don't recall seeing anything else but that. Mr. Knoblock: I object. That is very leading:

The Court: Yes, objection sustained.

Did you see them have anything in their hands?

A. Only the bricks.

How many of them had bricks? Q.

As many as I saw, which were probably about five or A. six men.

Q. How long was the train standing there?

A. Oh, a matter of probably three minutes.

Until you got the signal for the bridge?

A.

Then you crossed the bridge and you took the caboose, then, from the station to the M. & St. L. crossing?

Α. Yes, sir.

Was there anyone around the station when the train went through there?

I didn't see anyone at that particular time.

Q. How about the Cedar Street bridge? What happened there?

There were rocks thrown at us there, but I didn't see

who threw them.

The next point, then, was at Hollis?

Yes, sir.

And now where did you stop at Hollis?

Q. And now where did you stop at A. We stopped at a small building there, telephone A. We stopped at a small building there, telephone booth or shanty, whichever you want to call it, to report to the P. T. dispatcher that we were clearing the P. T. track.

Q. That is the Peoria Terminal?

A. That is the Peoria Terminal.

Where is the dispatcher located?

A. The dispatcher is located in Peoria.

You phoned back to him, is that the idea?

That's right.

.What happened at that point?

Well, as we stopped I got off. The moment we stopped, the bricks started coming in. I got off of the engine to go over to the shanty and called the dispatcher and told him that we were clearing their track. I went back out, got back up on the engine cab, in the engine cab, and the

bricks were still coming, but I did look through the window long enough between flying bricks to recognize at that time Jerry Underwood, John Gimming, Garland Brown, William Brown, William Christoff and also Reiman?

Herman Reiman?

A. Yes, sir, Herman Reiman.

Where were thev?

They were standing just opposite to the cab behind some cars which were located just on the next track over there; in between the car opening, I might say.

What were they doing?

They were throwing bricks at the engine.

- Did you notice where they were obtaining these bricks?
- A. No, they seem to each have a good supply. When 282 one man let go of his supply, the next man would step up, and they just kept them coming.

Was anyone injured as a result of the throwing of

bricks at that point?

A. I guess I was the only one that was hit right at that particular time.

Q. Where were you hit? A. By— There was a glancing blow. The brick hit the bolt over the fire door in the engine, and flew back and hit me in the mouth.

All right. Did anything else happen there?

Well, of course, I got back on the engine. I told the engineer, "All right, let's ge", but the bricks were flying so hard that he couldn't get hold of the brake valve right at that particular time when—with the bricks flying there. He watched his opportunity, and he finally did get the brakes released and get started, but we were delayed there probably three or four minutes longer than what we should.

Q. Where were the bricks coming from?

Most of them were— From these men that were throwing them, the striking employees.

Were they going into the cab?

Most of them were coming into the cab. They were taking particular aim, and when I would stick my head out to look they would seem to aim right at my head.

Pretty good shots?

You bet you!

Mr. Knoblock: I object.

Q. The engineer's position in operating the locomo-283 tive was in front of that window on his seat?

A. That was his position, yes, sir.

Q. Finally you got the engine started and proceeded westerly! What happened at the Wheeler crossing, if any

thing?

A. Well, were rocked again there. I didn't see who the men were at that particular point, and—but one of the bricks came through a window of the cab and hit the engineer in the right side, sort of in the hip and diaphragm, I would say. It hit him with such force that he seemed to become—it seemed as though he was losing consciousness. His head lolled over and he started to fall in between the cab and the boiler. Ernie Lawson, the roadmaster, was closest to him. He grabbed him and held him up until the engineer could again regain his senses.

Q. While that was going on, was the engine running

without anyone driving it?

A. Yes, sir.

Q. And where was this engineer when he was hit?

A. Beg your pardon?

Q. Where was the engineer when he received this blow!

A. He was just sitting on the front edge of the engineer's seat box, sort of half sitting and half in a standing position there.

Q. Let's go back to the telephone booth at the Peoria Terminal point. I will ask you if you observed any automobile near where these men were throwing bricks.

A. No, I did not.

Q. Is that near the road?

A. The road is up high there, and I didn't have an opportunity to see anything like that.

284 Q. Did you observe an automobile near the Wheeler

crossing!

A. Not right at the crossing, but I did observe an automobile at several different points along the road, the hard road.

Q. Was that the same automobile that you observed

each time?

A. Yes, it was.

Q. Do you know whose automobile it was?

A. While I was unable to get the license number, it looked very much to me like Jerry Underwood's car.

Q. You had seen that before?

A. I had seen his car before.

Q. From Hollis the road parallel the T. P. & W., does it not?

A. In some places, yes.

Q. And you cross the road at Wheeler crossing?

A. Yes.

Q. This road then proceeds on to Canton,-

A. Yes, sir.

Q. -is that right?

A. Yes. sir.

- Q. About how many men did you see along this rightof-way at these various points on the day that you are now-discussing, in addition to the men that you have identified?
- A. Well, while I did not count them, it seemed to me that there must have been in the neighborhood of twelve men, possibly as many as fifteen.

Q. And where did you see them next after Hollis?

A. I saw them in their automobile at several different points. There were two—

·Q. The same automobile?

- A. There was another car there which apparently 285 was used, although I couldn't recognize this car.
- Q. But you saw this one you believed to be Underwood's car-

A. Yes, sir.

Q. -at several points? Is that what you mean?

A. Yes, sir.

- Q. How many points west of Hollis did you see that
- . A. Well, that's pretty hard to say, but I would— As near as I can say now, I must have seen it at possibly five or six points.

Q. What was the last point west?

A. It was getting pretty close to Canton.

Q. When you saw them at the last time?

- A. Yes, sir, somewhere over near there. I don't recall exactly where it was,
- Q. Now, on the way home (I mean from Hamilton this way east) the next day, did anything happen after you reached Peoria? Before you reached the Peoria yard?

A. Nothing until we got to about Persimmon Street. Persimmon Street, I think, is where it was. That is the first place where some rocks were thrown at us, and then there were some rocks thrown at us two or three points

after we got over the bridge.

Q. On the way west the day before, the day you went out on this train, at the C. B. & Q. crossing at Canton did anything happen there? I don't believe I asked you about that.

A. Well, going through Canton it seemed that there

was someone behind every building.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

State what happened, if anything.

A. Going through Canton we were rocked pretty severely. I mean these striking employees threw rocks 286 at us at several points going through Canton.

Q. Did you see the men?

A. No, I didn't see them because they were coming from behind buildings. I say they were striking employees because I imagine they were the same men that threw rocks at us all the way through.

Mr. Knoblock: I object to that. He said he "imagines". The Court: It may stand. We will let it all stand ex-

cept the imagination part.

Mr. Heyl: I don't care for that part.

Q. Did anything happen west of Canton?

A. No. sir.

Q: Do you know the names of the men that threw the brick that hit Ward?

A. No, I don't.

Q. Now, on that trip west and also on the trip east from Hamilton, did you or not have interstate cars in the train going beyond Illinois, and coming from Iowa into Illinois!

A. I just don't recall that right now.

Q. Did your engine go into Iowa and back?

A. Yes, it did. On the trip going west it did not, but on the following day coming east we went from Hamilton to Keokuk, and then back to Peoria.

Q. Did you take some cars from Hamilton over that

morning?

A. Yes, we did.

Q. Were they cars that were in the train the day before?

A. I am quite sure they were.

Q. On the way back did you bring ears from Iowa into Illinois?

A. Yes.

Q. Is that the usual schedule for that train? To go 287 to Hamilton and remain overnight, and then on into Keokuk the next morning to complete its trip west?

A. That is the usual procedure, yes, sir.

Q. That is its schedule?

A. That was not a scheduled train I was on, but it is the usual procedure.

Q. The usual procedure, I mean.

A. Yes.

Q. Was there any damage done to the cab of that en-

gine by these rocks at Hollis?

A. Yes, windows were broken out and the window sash were broken, arm rest. Even the back of the seat box was broken.

Q. That is on the right hand side of the engine!

A. The engineer's seat box on the right hand side was broken, yes, sir.

Q. Any gauges broken that you recall?

A. Not that I recall.

Mr. Heyl: Cross examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Carnarius, you Eve af 228-Gilbert, as I understand it?

A. Yes, sir.

Q. And you have been employed by the T. P. & W. for fourteen years?

A. Yes, sir.

Q. How long have you been employed there as a lead car inspector?

A. A little over four years.

Q. What kind of work did you do before that?

A. I was trainmaster.

288 Q. And who did you discuss this matter with before coming in here to testify?

A. Before coming in here to testify?

Q. Yes.

A. I just don't know what you mean about discussing the matter.

Q. Who did you discuss your testimony with prior to coming in here?

A. I didn't discuss it with anybody. After making the trip,-

Mr. Heyl: Let him answer. I am objecting to interfering with the witness's answer.

The Court: What is the question before him?

Mr. Knoblock: I think it is answered.

The Court: I thought it was.

What is it?

(Question and answer read by reporter.) The Court: I think he can tell what he did.

After making the trips I made reports covering the different occurrences on the trip.

Who did you make this report to?

A. To the trainmaster's clerk.

Who are they?

The trainmaster's clerk was William Hunter, A.

And he is the only one to whom you made any report whatsoever?

Yes, sir. A.

- And he is the only one to whom you communicated what your knowledge was concerning these incidents, is that right?
 - A. Yes. I don't recall talking to anyone else at all. You have never discussed it with Mr. McNear?

No. sir.

Or with the attorneys involved here in this case! 289

No. sir. A.

I didn't think you had.

I positively haven't.

- Now, you were on this train on December 30, 1941, called "extra 43 east". That was from Hamilton to Peoria. is that right?
 - Yes. sir.

Mr. Heyl: He said December 31.

Mr. Knoblock: Let me ask the question.

As I recall it, you testified on December 30, 1941. you were on extra 43 east from Hamilton to Peoria, is that correct?

A. Yes, sir.

Then that would be coming back toward Peoria?

Yes, sir. A.

And you recall something there at the Nickel Plate crossing in Peoria, is that right?

Yes, sir. Α.

Or is that in East Peoria? Q.

That is East Peoria, just before entering the yard.

Whatever was done there, you did not see who did it?

I did not see the man who did it.

- And you didn't see who any of the men were there on that occasion?
 - I didn't recognize them at that point.

You recognized no one at that point?

A.

Q. And if you recognized no one at that point, you don't know whether those men were pickets or not, do you?

A. No. I don't.

Q. On December 31, 1941, you went as a conductor on .. the extra train west which left East Peoria at 9:57, 290 and went to Hamilton, is that right?

A. Yes, sir.

And you returned to Peoria on January 1, 1941, and the engineer in charge at that time was L. C. Ward!

Mr. Hevl: 1942?

Mr. Knoblock: 1942 is correct.

Q. On which one of those trips did you have armed special agents on those trains?

A. We had them on both trains.

Q. What were their names?

William Kane, and a man by the name of James. A:

Q. Where is Kane from?

A. I couldn't tell you.

Is he from Chicago? Q.

A. I do not know.

Q. Where is James from?

A. I do not know.

Do you know who hired them?

...Q. I know they were employed by the company, and that they were on the train. That's all I can say.

They were on there under the company's direction and under the company's control?

Α. Yes, sir.

And they carried loaded guns?

I suppose they were loaded. They had guns. I didn't see any bullets.

You didn't see any bullets?

A. No. sir.

Q. Which one of these guards carrying these guns rode , in the cab of the engine where you were?

291 A. Kane.

Q. As you proceeded west, starting out of Peoria,

you mentioned the position known as Swords' Siding, is that right?

A: Yes. sir.

·w.Q. Will you tell us just where that is?

Swords' Siding is sort of a team track.

Sort of what?

Team track for unloading cars. There is a concrete pavement there alongside of the hard road just on the east side of the Illinois River bridge, just a short distance beyond the bridge.

And where were you on that occasion on the train! Q.

I was on the engine.

And at that time this guard Kane was there with his gun?

Kane was there.

And Ward was there?

A. Yes, sir.

And vourself?

A. Yes, sir.

Q. Anybody else in the cab at that time?

A. The roadmaster, Lawson. Q. What is his first name?

A. Ernest.

Ernest Lawson? And anybody else? Q.

A. Yes, the fireman. Q.

What was his name? There were two firemen. One was named Harvey and the other was Bert Taylor.

Where is Bert Taylor from?

I couldn't say for sure, but I believe it's Hamilton I couldn't say for sure.

Q. What was his work prior to being employed by the T. P. & W.?

I don't know.

How long had he been employed on the T. P. & W. that day?

That is something I couldn't tell you, although I believe he went on strike in 1929.

Q. But from 1929 to now you didn't know where he was!

A. No, sir, I do not.

Q. Where had Ward been employed prior to that time?

A. He had been a hostler in the round house, and also a fireman on the pusher engine.

Q. At this Swords' Siding you say you saw William L. Brown and Frank Reiman, is that right?

A. Yes.

Q. There were other employees there or people there, but you don't know who they were?

A. That's right.

- Q. Where was William L. Brown and Frank Reiman standing?
- A. They were standing between the hard road and the first track from the hard road. I couldn't say definitely whether they were on the company property, but it did seem to me that they were practically on the line of company property. That is about as near as I can tell you.

Q. How far were they from the track?

A. I couldn't say offhand.

'Q. What is your best judgment?

A. Oh, I would say probably twenty feet.

Q. And you were able to identify those two men quite positively, but no one else?

A. Not right at that time.

293 Q. That is what I mean, at this time.

A. That's right.

Q. How many bricks would you say those two men threw that you saw?

A. They were rocking pretty fast:

Q. I am asking how many they threw, if you knew.

A. Well, I'm sorry that Isdidn't count them.

Q. You don't have any rough idea?

A. No, I don't. I couldn't ay just how many people were throwing, but bricks were coming in fast.

Q. I am asking about these two men.

A. Yes.

Q. The ones you have identified.

A. I couldn't say how many bricks were they threw.

Q. You couldn't?

A. No.

Q. The occasion of the Nickel Plate crossing that you referred to, you don't know who threw anything on that occasion?

A. Going into the yard, no, sir.

Q. Now, at the Cedar Street bridge you didn't see anybody throw anything there, did you?

A. No. sir.

Q. And you don't know whether—where they came from, or who threw them?

A. No, I don't.

. Q. Now, the next place that you observed them was at Hollis, is that right?

A. We stopped at the M. & St. L. crossing.

Q. And then proceeded to Hollis?

A. And then proceeded to Hollis.

294 Q. How many cars did you have on your train when you got into Hollis?

A. I don't remember.

Q. What is your best judgment?

A. It seems to me we must have had something like seventeen.

Q. About seventeen?

A. Yes.

Q. What day are you referring to now?

A. That is on December 31.

Q. And when you got to Hollis, what portion of the train were you riding on?

A. On the engine.

Q. And where did the engine stop with reference to the phone booth?

A. About two cars lengths west of the phone booth.

Q. Of the phone booth, and how many feet would you say that would be, according to your best judgment?

A. Probably about ninety.

Q. And are there any other tracks there at this point besides the track upon which your train was traveling?

A. Yes.

Q. How many more?

A. I think there are three tracks.

Q. And on which side were those tracks from the track on which you were traveling?

A. Well, between the engine and the telephone I say we were about three tracks. On the other side, do you mean!

Q. Yes, sir.

A. You mean on the other side of the engine cab?

Q. Yes.

295 A. I believe there are two tracks there.

O. Which side do you say that Jerry Underwood, John Gimming, William and Garland Brown and William Christoff were standing?

A. Well, they were standing in between the cars, right up against the cars, on what we call—I believe that is called the new track.

Q. Which side of your train?

A. On the right hand side of the train.

Q. On the right hand side?

A. Yes, sir.

- Q. How many tracks would you say were on the right hand side?
 - A. Two tracks.
 - Q. Two tracks?

A. Yes, sir.

Q. How long a cut of cars standing there?

A. I don't know.

Q. What is your best judgment?

A. I couldn't tell you at all. Q. Was it more than one car?

A. There were more than one, yes, sir.

Q. They were all together?

A. Yes, sir.

Q. You say these men were standing between two of these cars and throwing, is that right?

A. Yes, sir.

Q. They were all standing there together?

A. They were standing at the opening of the cars, between the cars.

Q. Were they standing there together?

A. They were standing there. All I could see at 296 one time was about two men, and they would keep changing positions, and the opening of the cars was lined up directly with the engine cab where it happened to stop.

Q. If that engine cab had been, say, forward or back twenty-five or thirty feet, it would not have been opposite that opening, is that right?

A. That's right.

Q: How long did you say that your train stood there?

A. Approximately ten minutes.

Q. Did you leave the cab of the engine at any time?

A. Yes, sir.

Q. When did you leave the cab of the engine?.

A. Just immediately after we stopped.

Q. Where did you go?

A. To this telephone booth.

Q. How long did you remain there?

A. Oh, I didn't stay there over two minutes. It didn't take me over two minutes.

Q. You did the telephoning?

- A. I did the telephoning,
- Q. Anybody else with you?

A. No, sir.

Q. Where did you go after you left the telephone booth?

A. Right back up in the engine cab.

Q. What did you do after you got in the cab of the engine?

A. I told the engineer to proceed.

Q. You say you stood there about ten minutes altogether?

A. He was unable to release the brake valves.

Q. · I didn't ask you that. You said you stayed there 297 about ten minutes altogether?

A. Yes, sir.

Q: As I understand you on direct examination, you claim by reason of this stone-throwing you were delayed three or four minutes?

A. At least so.

Q. The other three or four minutes did you remain there, to see who those men were?

A. Of course, it took me some time to go to the telephone booth and back. You asked me how long I was in the telephone booth. I was there, over there, a couple of minutes.

Q. At the time this took place there, this guard by the name of Kane with his gun was in the cab of the engine?

A. Yes, sir.

Q. 'What did he do?

A. I don't know what he did while I wasn't in the cab.

Q. While you were.

A. While I was there? He was simply dodging bricks like the rest of us. •

Q: That is what he was doing?

A. Yes, sir.

Q. Did any of your men ask them to stop?

A. Ask them to stop throwing bricks?

Q. Yes.

A. No, sir.

Q. You did not?

A. No, sir.

Q. When you got back and made out your report, did you or anyone swear out warrants for these men?

A. I did not.

298 Q. Did you or the company make any steps toward prosecution?

A. I couldn't say. I didn't.

Q. . You didn't?

A. No, sir.

- Q. Did you at that time when you returned complain to any of the authorities?
 - A. I made my report, yes, sir.

Q. I mean the public authorities.

A. No, sir.

Q. Ana you haven't yet?

A. No, sir.

Mr. Heyl: You personally?

A. I personally didn't.

Q. Now, as I understood you, when you testified on direct examination here, you saw these men as you glanced out the cab? The window of the cab?

A. I kept looking at every opportunity.

Q. And you kept going back and forth with your head to see if you could see who was doing it, is that right?

A. Yes, sir.

Q. And you kept that up for about how long?

A. As long as we were standing there.

Q. Was the window broken that you were looking through?

A. Yes, sir. 1

Q. There was no window there, is that right?

A. No, sir. That's right.

Q. Now, this occasion at Hollis, what day was that again that happened?

A. That was December 31.

299 Q. Were you the only one in the cab there that was observing these men?

A. No, I think some of the rest of them also recognized

the men that were there.

Q. I see. Now, you say that you recognized the car of Jerry Underwood?

A. Yes.

Q. Where did you recognize that?

A. Where?

Q. Somewhere near Canton?

A. At different points along the hard road.

- Q. Where was the last time you saw it near Canton?
- A. Well, that was pretty hard to say. I never kept a mental note of it at all.

Q. What is your best judgment?

A. About all I can say there is that I saw it at several different places along the hard road—

Q. At or near Canton?

A. —as we were going toward Canton.

Q. What kind of a looking car is it?

A. It is sort of a maroon color.

Q. What make?

A. I believe it is a Dodge. I recognized the shape of the car, a very streamlined model.

Q. You can't tell us with any degree of certainty just

where you saw it near Canton?

A. No. I couldn't.

Q. You don't know whether it was one or two miles of Canton, or where?

300 A. That is right. I didn't make a note.

Q. You didn't recognize anybody there, did you!

A. I didn't recognize anyone in Canton, no, sir. Q. You don't know who was there at Canton?

A. No, sir, but the brickbats were coming in through the windows.

Mr. Knoblock: I disclaim the answer. The Court: It may be disclaimed.

Q. You didn't recognize any of them there?

A. No, sir.

Q. You didn't see any of them?

A. No, sir.

Q. Ernie Lawson, the roadmaster, how far did he travel with you on that trip?

A. All the way.

Q. All the way and back, is that right?

A. Yes, sir.

Q.. In what capacity was he there?

A. He was roadmaster and acting as pilot.

Q. Acting as pilot?

A. Yes, sir.

Q. Before you were—You are now a car inspector, is that right?

A. That's right.

Q. Did I understand you to say you were at one time a trainmaster?

A. Yes.

Q. Is it a promotion or demotion of car inspector to trainmaster?

Mr. Heyl: I object as immaterial.

The Court: What is the difference? I can't see it.

Objection sustained. Mr. Knoblock: That's all.

301 Redirect Examination by Mr. Heyl.

Q. You were asked with reference to certain special agents having guns in their possession.

A. Yes, sir.

Q. Did you see these guns displayed by either of these special agents at any time on either of these trips when the trouble was going on?

A. Do you mean did they draw the guns?

Q. Yes.

A. No, sir, I didn't see that. In fact, I told them not to use them on my train.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did they use or show them at the time these strikers were about?

A. Not in my presence.

Q. Were any shots fired at any time-

A. No. sir.

Q. -in your presence?

A. Not at all.

Q. On either of these trains?

A. No. sir.

Q. You were asked with reference to the number of men that were throwing stones when the train was over at the viaduct in East Peoria, and you gave the names of two men to Mr. Knoblock in response to his question as being two persons throwing. Were there others of that crowd throwing?

Mr. Knoblock: I deny that; not at the viaduct, but at

Swords' crossing.

A. That's right.

302 Q. Were there other men throwing?

A. There were other men there. As I said, I did not recognize the rest of them but, from the number of bricks coming in through the windows, there had to be more than two men throwing bricks.

Mr. Knoblock: I object, and move it be stricken.

The Court: I think that is a question for the court to decide. He testified there it was a great barrage of bricks being thrown. I don't know how his judgment would be better than anyone else's

Objection sustained.

Mr. Heyl: I think that is all.

The Court: Anything further in cross-examination?

Q. Did you or not give any instructions or directions to any special agents in your charge on either of these trains with reference to the use of any gun?

A. After I saw-

The Court: Answer the question.

Is there an objection?

Mr. Knoblock: There is no showing here that they were under his charge.

The Court: Were you in charge of the train?

A. I was in charge of the train.

The Court: Did you have a conversation relative to that?

A. I did. I think I answered the question.

The Court: Read it to him. (Question read by reporter.)

A. I told them not to use their guns.

O. When did you tell them that?

A. After I saw what the situation was, after we left 303 the yard on December 31. We were being so heavily

rocked on the way over to the bridge I was afraid somebody might get a little bit toe mad, so that was one of my reasons for dropping off of the engine and going back to the caboose as we were passing by the depot. I told the men on the rear end, I told the men on the head end, not to use their guns at all.

Mr. Heyl: That's all.

Recross Examination by Mr. Knoblock.

Q. You were in charge of the train on this day, is that right?

A. Yes, sir.

Q. Are there any rules, operating rules, of a railroad giving you, in your capacity there, charge of any special agents?

A. No, sir, except that a conductor is in full charge of

his train.

Q. But there is no operating rule to that effect that applies to special agents?

Mr. Heyl: I object as immaterial.
The Court: He said there wasn't.

Q. You took this upon yourself to take charge or supervision, or did somebody else give you authority?

A. Nobody else told me about it.

Mr. Knoblock, That's all. Mr. Heyl: That's all.

(Recessa)

I. H. HULTGREN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott. .

Q. Mr. Hultgren, what is your business?

A. I am signal supervisor of the Toledo, Peoria & Western.

Q. And are you familiar with the location of the lane which leads from the yards up to the hard road 24?

A. Yes, sir.

Did you have anything to do with putting in a light there recently?

Yes, sir, I put a light in. A.

Tell us when you put that light, in.

The light was put in service just prior to 3:30 on January 30.

On January 30?

December 30.

December 30 last?

A. Yes.

. Q. That was put up under your supervision?

Yes, sir. A.

Q: That was connected up so it burned from that time on?

A. Yes, sir.

Did you also put a light at the west end of the yard

Yes, sir, I did.

And on what date was that put in, and where was it located?

A. December 29, and it is just adjacent or just east of our watchman's shanty.

Q. Near the viaduct?

A. Yes, sir.

And on which/side of the track was that put?

That is on the south side of the track.

South side of the track?

A. Yes, sir.

Q. Has that been connected up so it was burning since you put it in?

Yes, sir, at night. A.

Q. Explain how and to what extent this light at the end of the lane leading onto the hard road illuminates.

It illuminates to about the edge of the pavement, and it goes back on down into our lane until its intensity passes out.

Have you observed that since it has been put in?

A. Daily.

Q. And nightly?

A. It is dark when I leave every night.

And you have observed it each day as burning?

A. Yes, sir.

Q. Did you come out of the lane one day last week with Mr. Wehr?

A. Yes, sir.

Tell us what you found on the lane leading down from the hard road to the T. P. & W. vards.

A. As we were driving out, we noticed several roofing

nails' scattered across the lane for some distance. Q. And what, if anything, did you do with reference to that? .

After we returned from our business, we stopped before we ran into them, and I got a broom and swept the road clear.

. Q. What quantity of nails did you find there on that

roadway?

A. There was more than half the lane covered for

306 the entire width of the lane.

Q. And where was it? Was it at the end of this lane where the picket line was!

It's at the north end, yes, sir. Α.

That is where the pickets were stationed?

Yes, sir.

Q. Was it after the pickets were stationed there that von observed these nails?

A. Oh, ves.

Did you, as you passed in and out of that lane, observe as to whether any of the pickets at this lane had clubs?

I remember seeing one with apparently a table leg-

Did you recognize the name of that party?

A. I believe engineer Kirk was carrying that club.

Is that Verd Kirk?

Q. Is hat A. Yes, sir.

Q. Did you or not observe other clubs there in that vicinity stacked up against the railing?

A. I don't remember that.

Q. There were some nail kegs out there by the pickets? Sitting in this driveway at any time?

A. I don't remember those."

Q. You didn't see that?

A. No.

Q. Do you remember the night Mr. Merrill was injured?

A. Yes, I do.

Q. Was this light put in before or after that time?

A. It was put in prior to that time.

307 Cross-Examination by Mr. Knoblock.

Q. What did you say your first name was?

A. The initials, I. H., or I-v-a-r.

Q. Hultgren?

A. H-u-l-t-g-r-e-n.

Q. Where do you live?

A. At 305 North Main Street, Washington, Illinois.

Q. How long have you been employed by the T. P. & W.

A. Since March of 1936.

Q. And all that time as signal supervisor!

A. Yes, sir.

Q. Where was your work prior to that?

- A. The Chicago Rapid Transit Company of Chicago, /Illinois.
 - Q. You left that employment up there to come here, is that right?

A. Yes, sir.

Q. Now, you testified here about a light installed December 30, 1941.

A. Yes, sir.

Q. When did you first start to work on that light?

A. About 8:30 A. M., December 30,

Q. And did anyone assist you?

A. Yes, sir.

Q. Who was that?

A. Our division light man, E. L. Snyder, shop electrician R. E. Green and his helper.

Q: What is the helper's name? .

A. I don't know his name.

Q. You say that you started about 8:30 that morning. Where did you run your line from?

308 A. We ran it from a building on the east side, from a residence there.

Q. You mean the residence that's facing the hard road?

A. Yes, sir, on the south side of the hard road.

Q. How far is that residence from this lane?

A. I imagine about forty feet.

Q. North or south, or east or west of it?

A. East.

Q. And you say it was put—this light was put into operation about 3:30 that afternoon?

A. It was tried at 3:30, and turned on when it began

to become dark. ·

Q. Do you know who turned it on?

A. I don't recall the watchman on duty at that time.

Q. That was the first day that it was used?

A. Yes, sir.

Q. And what hour was it turned on?

A. I did not see if turned on.

Q. All right! Now, then, you spoke of another light that you installed the day before this one, is that right. December 29?

A. Yes, sir.

Q. And that, you say, is near the viaduct on the T. P. & W. track, is that right?

A. Yes. sir.

Q. Which viaduct do you mean by that?.

A. That's highway 150.

Q. . Is that the one that—The viaduct you mean, is that the one that is over the T. P. & W. tracks that is a part of the highway that leads to Morton, Illinois?

A. Yes, sir.

309 Q. Which direction from the viaduct is that light?

A. The light is east.

Q. East of the viaduct? About how far east?

A. I would say about a hundred feet.

Q. And this light is on the south side of the tracks!

A. Yes, sir.

Q. About how far south of the tracks?

A. It is less than fifty feet.

Q. I see. Now, the light that you had installed there at the end of the lane, as I understand it, that illuminated northerly to about the edge of the pavement?

A. That is on Heppe's lane?

Q. Yes.

A. That is right.

Q. And then it illuminates, as you say, down to the yard until its light becomes less?

A. That's right.

.Q. Now, with reference to these roofing nails that you have testified to, what day did you first observe them?

A. On the night of the 29th.

Q. On the night of the 29th? What hour of the day would you say that was?

A. It was after, just after, 8 P. M.

Q. It was after 8 P. M., and were you driving in a car on that occasion?

A. I was driving the truck that is assigned to the elec-

trical department of the railroad.

Q. And Mr. Wehr, did you say, was with you?

A. Yes, sir.

310 Q. And as you drove out of the premises that evening, is that when you noticed the nails?

A. Yes, sir.

Q How did you happen to notice the nails, Mr. Hult-

gren?

- A. They were brand new roofing nails, and the reflection from the headlights pointed at them, or we could see them.
- Q. I see. You don't know how they were placed, do you?

A. I do not.

Q. And you did not see anyone place them there, did you?

A. No, sir.

Q. As far as your knowledge goes, you don't know of anyone who did place them there?

A. No, sir.

Q. They were along this lane how far toward the round house? How far south from the edge of the pavement would you say they extended?

A. They began between thirty and forty-five feet, and then extended a considerable distance down the lane.

Q. About how far, would you say?

- A. It appeared to me to be plus or minus half of the lane. There was a good many on the lane, and for the entire width of the lane.
- Q. And the T. P. & W. has a sharty there on that lane?
- A. That evening the only building was in the yards itself.

Q. Isn't there a guard stationed there twenty-four hours a day somewhere?

A. That was installed at the head of the lane on De-

cember 30.

Q. That was installed there on December 30? You say you first noticed these tacks on what day?

311 A. On the 29th.

Q. And that was the day before you installed the light there at the end of the lane?

A. That is right.

Q. You mentioned that you saw Verd Kirk with a table leg in his hand, is that right?

A. Yes, sir.

Q. The pickets there—This weather during this period of time was pretty cold, wasn't it?

A. Yes, sir.

Q. And they had fires built there, didn't they?

A. Yes.

Q. They were built there for the purpose of keeping warm, isn't that right?

A. Yes.

Q. A great portion of the fuel they used was sticks and pieces of boards, and you might ca'll them clubs and so forth, as fuel, isn't that right?

A. On the 30th some of the employees complained to me of the coal that was sent by the management of our

railroad.

Q. And they used wood?

A. Yes.

Q. And you observed some of the pickets stirring up this fire with pieces of sticks to get it to burn better?

A. They were tree limbs.

Q. You never, on any occasion, saw Verd Kirk use this table leg toward anyone in a menacing manner, or threatening anyone?

A. No, sir.

Q. They at no time ever threatened you coming out 312 of there, did they?

A. No, sir.

Q. And you never saw them threaten anyone else as they went in and out of the lane there, did you?

A. No, sir.

Redirect Examination by Mr. Elliott.

Q. You are not a member of either of these Brotherhoods, are you?

A. I am not.

Q. What character of a light was that which was installed near the west end of the lane?

A. The power of the light up by the viaduct, is that what you refer to?

Q. Yes.

That is a reflector type light; and we are using a thousand watt light bulb in that lamp.

Does that light up all of the vicinity?

It gives you illumination in a general area of not less than five-tenths of foot candle, which is prescribed for protected areas.

Q. How far does that light extend out from where the .

light is located?

The projected light?

Q. The projected light, yes.

From the fence that is at the edge of the lane or driveway going to the ice house, it goes beyond the west side of the viaduct, and covers the roadway on the south side of the track coming into the ice house.

Q. And about how many feet would that be from the extreme east of the light to the extreme west of

the light, approximately?

A. One hundred and fifty feet.

Q. Now, you have spoken—I understood you to say on direct examination that you and Mr. Wehr went back after you had come out the first time and noticed these nails.

A. Yes, sir.

Q. How long were you gone?

A. · About a half hour.

Q. And when you came back were there more or less nails on this driveway than you had noticed as you went . out?

Mr. Knoblock: I object to that. I don't see how this witness could determine that.

The Court: I don't know but, if he can, tell it.

Was there more or less?

There appeared to be more because we went into them before I saw them coming out,

Q. You swept the nails off?

A. Yes.

Mr. Elliott: That's all.

Recross Examination by Mr. Knoblock.

Q. Mr. Hultgren, you were not in a position to make any count of those nails, or to estimate how many were there on either trip, were you?

A. No, I couldn't estimate the amount that was there.

Q. How high is this light situated from the ground that you put at the viaduct?

A. Approximately twenty feet.

314 Mr. Knoblock: I think that's all.

Re-redirect Examination by Mr. Elliott.

Q. What is the candle power of that light— Mr. Knoblock: I think that has been testified to.

Q. -at the lane?

A. Not at the lane.

The Court: I will let him testify to it.

What is it?

A. We have a thousand watt flood bulb in there.

Mr. Elliott: That's all.

315 LARRY WARD, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Larry Ward.

Q. Speak up.

A. I am a little hoarse. I have got a cold.

Q. How old are you? ..

A. Fifty-six.

Q. Where do you live?

A. I live at 217 Arthur, Peoria. Mr. Knoblock: Arthur or Archer?

Q. Peoria, Illinois?

A. Arthur, Peoria, Illinois.

Q. And what is your business or occupation?

A. I have been hostler and roundhouse foreman and laborer and boilermaker and machinist and everything, you might say, in the railroad business.

Q. Have you ever operated a locomotive?

A. Yes, sir. Q. I will ask you if, on December 31, 1941, you were the engineer on extra train 43 west?

A. Yes.

Q. And, now, what time-

Mr. Knoblock: What day was that?

Mr. Heyl: December 31, 1941.

Q. Is that correct?

316 A: Yes.

What time did you leave the yards of the plaintiff in East Peoria on that date?

Well, around 9-I don't know; it was around 7:30,

I think:

Q. What was the destination of that train?

A. Hamilton.

Q. As you traveled west from the East Peoria yard, what, if anything, happened? What was the first thing that happened?

A. We were stored as we went under the viaduct.

Q. And that was the Nickel Plate crossing, or near there?

A. Yes, sir.

Did you recognize anyone at that crossing throwing stones!

Well, I didn't see anybody throw stones, but when they quit hitting the cab and I looked back, there I saw Christoff and Herman Siebenthal.

Q. That is W. J. Christoff?

A. Yes.

And Herman J. Siebenthal?

A. Yes.

Did anyone of them make signs or motions at you?

Christoff shook his fist at me, but Siebenthal never made a move.

Q. Now, do you know where the stones that were thrown came from? Which direction?

A. They came from the north side of the track.

Where, with reference to the position these men were standing when you saw them?

A. They were standing on the north side of the track.

Q. Where did the stones come from with reference 317 to where you saw these men? Did they come from that direction?

A. Yes, sir.

Mr. Knoblock: I object to that. It is very leading.

The Court: He has answered. Perhaps we will save time by doing it.

Q. Did you see any other men there?

A. No, sir, I didn't see anybody else.

Q. Just the two?

A. Just the two.

Q. How many stones were thrown at you at that place?

A. Leouldn't say.

· Q. More than one?

A. Yes, more than one.

Q. You didn't have time to count them?

A. No.

. Q. Is that what you mean?

A. Yes.

Q. Did you have any difficulty at the East Washington Street crossing?

A. No, sir.

Q. Or West Washington Street crossing?

A. No, sir.

Q. Swords' Siding?

Mr. Knoblock: No difficulty at East or West Washington. Streets?

Q. Did you stop at Swords' Siding?
A. No. Where is Swords' Siding?

· Q. It's east of the lower bridge. That is the Peoria and Franklin Street bridge.

A. I stopped there for the board.

318 Q. Did you see John Feuger or Herman Reiman any place?

A. I saw them on the Washington Street crossing.

Q: On that same trip?

A. Yes.

·Q. Did either of these men have anything in their pos-

A. Reiman had a brake club.

O. What is a brake club?

A. It's a stick that you wind up the brakes with to set them on a car.

Q. Wood or iron?

A. Wood.

Q. How large is that?

A. Well, it's about three feet in length, and an inch and a half or inch—

Mr. Knoblock: In and a half what?

A. -in diameter

Q. Did you see him do anything with that club?

A. He just drawed back like he was going to throw it, but he didn't throw.

Q. Where was he looking when he drew back?

A. At the engine.

Q. Did Feuger do anything?

A. No. sir.

Mr. Knoblock: What?

A. No.

Q. Did he have anything in his hand?

A. No.

Q. Did he make any motions?
 A. Just pointed his finger.

319 Q. Where?

A. At me.
Q. How did he do that?

A. Just like that (illustrating).

Q. Was there any fire around there at that place on the ground?

A: I didn't see any.

Q. Reiman wasn't making a fire?

A. No. sir.

Q. Or stirring any fire?

A. No, sir.

Q. From that point west, did you observe anyone following your train, that is, anyone on the highway following your train?

A. Yes, sir-

Q. Tell the names of the persons that you observed.

A. Jerry Underwood's car, and Dilley.

Q. G. L. Underwood?

A. Yes.

Mr. Knoblock: What is that?

(Answer read by reporter.)

Q. Who else, now?
A. And one of the Brown boys' cars.

Q. Was that W. L. Brown?

A. Yes.

- Q. Did you observe the men that were riding with these men?
 - A. Well, not at that time, no.

Q. Did you later?

A. Yes, sir.

- Q. Give me the names of the ones that were riding with these men.
- A. Well, I observed in Underwood's car John Gim-320 ming, Christoff and Gabbert.

Q. C. S. Gabbert!

A. Yes.

Q. Were there men riding in the cars that you did not recognize?

A. Yes, sir.

Q. How far did these three cars follow your train?

A. To Canton.

- Q. How often did you see them between Peoria and Canton?
- A. Well, I didn't see them. I had to watch where I was going. I couldn't see them half of the time they were throwing stones. I had to watch the engine, and watch where I was going.

Q. How far is it from Peoria to Canton?

A. About thirty-two miles.

Q. Do you know the occupants of the other cars?

A. No, I don't.

Q. Now, where did these men who were in these cars begin stoning your train?

A. Down at the bridge.

Q. Which bridge?

A. Franklin Street bridge, when we were stopping for the board.

Q. East of the Illinois River?

A. Yes.,

Q. Where did they stone you next?

A. The first street the other side of Cedar Street bridge.

Q. The first what?

A: The first street the other side of Cedar Street bridge. I don't know what it is.

Q. Persimmon Street?

A. Down there somewhere.

321 Q. What happened as the result of this stoning of this train?

A. They broke the headlight there.

- Q. Did you see the man that threw the stone that broke the headlight?
 - A. Yes, sir.
 - Q. Who was that?
 - A. Gabbert.
 - Q. C. S. Gabbert?
 - A. Yes, sir.
 - Q. What else did he do?
 - A. I didn't see him do anything.
 - Q. What did the others do?
 - A. I didn't see anybody else.
 - Q. Were there other men?
- A. There were other men there, but I didn't recognize them.
- Q. Now, how far were these men from your engine when they were throwing these stones?
 - Mr. Knoblock: I didn't get that question.
 - (Question read by reporter.)
 - A. I should say about thirty feet.
 - Q. Now, was roadmaster E. A. Lawson with you?
 - A. Yes, sir.
- Q. I will ask you if, at that point that you have just indicated,—if there were any statements made by the crowd of these men to Mr. Lawson?
- A. Yes, they wanted him to get out of the window. They didn't want to hit him, I was the guy they wanted to get.
 - Q: Is that what they said?
 - A. Yes.
- 322 Q. Who made that statement?
 - A. Underwood, for one.
 - Q. Anybody else?
 - A. Well, I couldn't say.
- Q. Did he say anything further with reference to what he wanted to do to you?
 - A. He said I would never get to Hollis.
 - Q. What else did he say?
 - A. He said he was going to kill me.
 - Q. Who said that?
 - A. Underwood.
- Q. Did he have anything in his possession when he said that?
- A. I couldn't say. I wasn't looking out the window, and didn't see him.

Q. Who else was there?

A. Dilley was there.

Q. H. J. Dilley?

A. Yes. I couldn't say who the others was because I couldn't stick my head out.

Q. These were all former employees of the T. P. & W.,

were they?

A. Yes, sir.

Q. Were they men who were on strike?

A. Yes, sir.

Q. Where was the headlight located that was knocked out of that locomotive?

A. Down there below Cedar Street bridge.

Q. You have stated that was Gabbert?

A. Yes.

Q. Did you see that headlight broken?

323 A. Yes.

Q. Where did Gabbert stand when he threw the

stone that broke the headlight?

A. He got out on the street crossing. He couldn't hit it any place else. He couldn't hit it from Cedar Street, so he got on the crossing.

Q. When the locomotive came on the crossing?

A. Yes.

Q. How close was he to the locomotive when he hit the headlight?

A. I would say about twenty feet.

Q. Did you pass on with the locomotive?

A. I never stopped.

Q. Did he say anything to you?

A. No.

Q. Where were these men when this statement was made to you they were going to kill you?

A. At the Franklin Street bridge.

Q. At the Franklin Street bridge?

A. Yes.

Q. How close were they to the locomotive when they made that threat?

A. Oh, around thirty feet.

Q. What happened at Hollis?

A. Well, we pulled into Hollis, and somebody holiered "Stop" so the conductor would be protected by the train to go get the orders, so I stopped, and, when my engine stopped, the cab was right between the cars parked on the

siding, and then the bombardment commenced. They even knocked the window frames of the windows, and they dropped down on the floor they hit it that hard.

324 Q. You mean the window frames in the cab?

A. Yes.

Q. Where were you at that time?

A. Up in the corner of the cab.

Q. What were you trying to do?

A. Keep out of the way of those bricks?

Q. Any brick hit you!

A. Not there.

Q. What about the air at that point?

A. Well, of course, I guess I must have given it a little too much air, and had to wait for it to pump off; to get up, I had to raise like this (illustrating) to reach my air and throttle.

Q. Why did you reach back?

A. To keep the bricks from hitting me.

Q. In other words, you couldn't remain in your seat?

A. No, sir, not in the window.

Q. How long did that bombardment of bricks continue while your engine was at that point?

A. I don't know; three or four minutes.

Q. Can you identify any of the men that were there throwing bricks at that time?

A. No, sir.

Q. Who was in the engine with you?

A. Well,—

Q. The conductor?

A. The conductor was there.

.Q. What is his name?

A. Carnarius.

Q: That is the Carnarius that has testified in this case!

325 A. Yes, sir.

Q. Did you see anything happen to the conductor

while this bombardment was going on?

A. No, I looked around and seen his mouth bleeding, and I said, "What happened?" and he said, "I got hit by a brick,"

Mr. Heyl: That is a part of the res. The Court: That may be stricken.

Mr. Heyl: He can tell what he saw. That stands, or is that stricken, too?

The Court: I will permit him to tell what he saw. He said his mouth was bleeding.

Mr. Heyl: I didn't understand what you meant. The Court: Not the entire answer, but that part.

Mr. Heyl: A part of the res, spoken at the time it occurred, would be competent. That has been the rule: Any declaration made at the time. Under that theory, I think it would be competent.

The Court: No, that may be stricken. He may state

what he saw.

Q. You saw the marks on the conductor, did you,-

A. Yes.

.. Q. -- and the blood?

A. Yes, sir.

Q. And when did you see that with reference to the time these bricks were coming in the window? At that time?

A. At that time.

Q. After you left that point, the next stop was Wheeler's crossing, or the next point you saw these men was Wheeler's crossing?

A. Yes, sir.

326 Q. You didn't stop there?

A. No.

Q. Tell what happened at Wheeler's crossing.

A. As I was approaching Wheeler's crossing. Underwood drove up within ten feet of the track and parked his car.

(Answer read by reporter.)

Q. I want to leave that a moment, and go back to the Pekin road crossing. Did something occur there?

A. No. sir.

Q. Nothing that you observed.

A. No.

Mr. Knoblock: I object to that. The Court: He has answered.

Mr. Heyle I want to confine it to his knowledge.

Q. What did Underwood do at the Wheeler crossing when you saw him?

A. He got out with a brick, and got as close to the engine as he could get, and throwed it through the front window of the cab, and the brick hit the side of the window, and went down and struck me in here (indicating right side).

Q. Where are you pointing.?

A. Right on my groin,

Q. The right groin?

A. Yes, sir.

Q. Go ahead?

A. That knocked me out for, oh, five or ten minutes, and they wanted to stop the train and I wouldn't let him. I couldn't talk, but I could keep their hands off the throttle. By the time I got half down to Mapleton, I was all right and proceeded.

Q. What was the name of that Underwood? What is

his given name?

327 A. They call him "Jerry".

Mr. Heyl: Is he in the court room? Jerry Underwood there? Stand up!

The Court: I think we can avoid that. You know Jerry Underwood, do you?

Q. Do you see him in the court room?

The Court: He says he is the man. That's sufficient.

A. I can't see him.

Q. Was there anyone with Underwood at that time?

1. Yes, John Gimming and Gabbert.

Where were they?

A. Underwood gets alongside of the engine and they get back there; and they throw cross fire, and I had to take one or the other, and I took Underwood.

Q. You dodged them?

A. I stayed far enough they couldn't hit me.

Q. Where were they?

A. They were on the hard road and, as he throwed this way, they threw that way (illustrating).

Q. You identified those men at that time, and recog-

nized them?
A. Yes, sir.

Q: 'Anyone else there you recognized?

A. He was going a pretty good speed of the car, and I don't know whether the others got out of the car.

Q. Was there another car?

A. There was cars behind his?

Q. How many cars?

A. Well, I don't know.

328 Q. Well, when you got about half way to Mapleton from that corner you revived, and did you see those men after that?

A. Glasford.

Q. At Glasford?.

A. Yes.

Q. Whom did you see at Glasford?

A. Well, the Brown boys is all I seen. I didn't see-

Q. The Brown boys?

A. Yes, sir.

Q. What are their given names? Do you know?

A. Well, no, I don't.

Q. Were they former employees of the road?

A. Yes, sir.

Q. Where did you see them?

A. Well, they were on a road crossing, street crossing, on the left hand side of the engine.

Q. What did they do?

A. They threw stones at the engine.

Q. At the cab?

A. Yes.

Q. Any of them hit?

A. Nobody hot.

Q. Was the engine hit?

A. Yes, sir.

Q. What part of it?

A. Cab, broke the windows out on the left side. That was the first time the left side got any bricks was Glasford.

Q. That is the fireman's side.

A. Yes, sir.

329 Q. What was the fireman's name?

A. His name was Taylor.

Q. Then, after leaving Glasford, what was the next stop that you observed these same men?

A. Canton.

Q. How many of them did you observe?

A. I only seen one man.

Q. Who was that?

A. John Gimming.

Q. John J. Gimming? Was that the same Gimming you observed before?

A. Yes, sir.

Q. Where did you see him?

A. As I went across the C. B. & Q. crossing, I looked back, and he was the last man that threw a stone.

Q. You saw him throw?

A. Yes, sir.

Q. What did he hit?

A. The side of the cab.

Q. Which side?

A. The right side.

Q. Where did he hit?

A. I don't know.

Q. Was there more than one stone thrown?

A. Yes, sir.

Q. But that is the only one you can identify as being by the boys involved?

A. Yes, sir, that is the only one.

Q. What did he throw, if you observed?

A. Paving brick; half of a paving brick is what hit me.

330 Q. What became of that brick?

A. It laid on the engine until I got back. It is still on there as far as I know.

Q. Did you stop at the water tank in Canton?

A. No. sir.

Q. Why?

A. I was afraid to stop.

Mr. Knoblock: I object to that.

A. I was afraid to stop.

The Court: I think that may stand if that was the only reason.

Was that your only reason you didn't stop there?

A. Yes, sir.

The Court: Go ahead?

Q. Was there a usual stop there for water?

A. Yes, sir.

Q. Where did you go for water?

A. Bushnell.

O. Was there anything that happened between Canton and Bushnell?

A. No, sir.

Q. Did you have an order to meet any train at Canton

A. Yes, I had orders to meet engine 41.

Q. Did you stop for that?

A. No. sir.

9. Where did you meet that train?

A. I met that train at. Cuba.

O. Now, after you arrived at Hamilton, did you take that train, or any part of it, to Keokuk, Iowa?

A. No, sir.

331 Q. Did you next morning?

A. Yes, sir.

Q. What did you take to Keokuk?

A. Well, we took some coal.

Q. Did you take this same locomotive?

A. Yes, sir.

Q. And any of the cars that you pulled to Hamilton, did you take those?

A. Yes, sir.

Q. What did you get at Keokuk? A. We got some empty coal cars.

Q.. Where did you take the empty coal cars?

A. We took some of them to Hamilton, and some of them to Cuba.

Q. On your return trip.

A. Return trip:

Q. Did anything occur on the return trip on January 1, 1942, on extra 43 east?

A. Yes, sir.

Q. What occurred?

A. I stopped for the P. & P. U. crossing, and we were rocked there.

Mr. Knoblock: I didn't get that.

(Answer read by reporter.)

Mr. Knoblock: . This is on the way back?

A. Yes.

Q. Where is the P. & P. U. crossing?

A. Just below the depot about a block or so.

Q: Which depot?

A. Union Depot.

332 Q. Persimmon Street? A. Yes.

Q. What happened there?

A. They rocked the cab again; nobody hurt.

Q. How many men were engaged in that?

A. It was dark. I couldn't see nobody. Q. How many rocks were thrown?

A. Ob, a dozen or so.

Q. What time was it?

A. It was about 5:30.

Q. And did you have any windows in the cab at that time?

A. Very few.

- 6. What did you have to protect you from the cold?
- A. Nothing.

Q. Do you know how many cars or loads you pulled into the Peoria yard that night?

I think twenty-two loads and seven empty, or

twenty-three. I wouldn't say which.

What happened at West Washington Street?

- Well, at West Washington Street a guy tried to throw through the front window, but I didn't recognize him.
 - What did he throw? Q.
 - A rock. A.
 - Q. What?
 - A rock. A.
 - Q. Did you see it hit some place?
 - A. I heard it hit, ves.

What did it hit?

A. It hit the front end of the cab somewhere. Q. Now, did you proceed then to East Washington Street in East Peoria?

Yes.

Q. · Anything happen there?

Another guy throwed at the cab, the front window.

:How far is it from the crossing on West Washington Street to the crossing on East Washington Street?

A. Oh, it must be two mile.

Q. How much?

A. Two mile

How far is it for the train to travel to get from one point to another?

Well, about the same distance, I would say.

Parallel, or partly parallel?

Α. Yes, sir.

Now, was anyone on this train that day or the day before besides the conductor who received any injuries or was hit by any of these rocks?

Yes. Ernie Lawson was hit.

How was he hit? What was the nature of it?

It hit him on the hip, but it didn't seem to hurt him anv.

Q. What was it?

A. Brick.

Q. Where did that occur?

A. Down here at the bridge.

Q. Cedar Street-bridge?

A. Yes.

Q. Was G. L. Underwood on the train that day?
A. Underwood?

334 Q. Who threw that brick that hit Lawson?
A. I couldn't say.

Q. You didn't see?

A. No:

Q. Do you know Ashburn?

A: No.

Q. Was there anyone else? That is Robert Ashburn. Was he on the train that day?

A. I couldn't say.

- Q. Then when this train reached the Nickel Plate crossing and the viaduct over 151, was there anything occurred there?
 - A. Yes, there was a few stones throwed, but not bad.
- Q. Did you notice the direction from which these stones were thrown?

A. They came from the north side, I think.

Q. Did you notice any men there?

A. No.

Q. Had you noticed men at that point before the stones were thrown?

A. No, I couldn't see from where I was at. Going in, I was on the wrong side of the engine. I couldn't see that side.

Q. When you went out the day before, you passed there?.

A. Yes.

Q. Did you notice any men there?

A. Yes, sir.

Q. Where were they?

A. They were on the road crossing on half of the street there.

Q. Were those the pickets there?

A. Yes.

Q. When these stones were thrown on your way in, did they come from that direction?

335 A. Yes, sir.

Mr. Knoblock: I object. Oh, I will withdraw that. Mr. Hevl: Cross examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Ward, you say you live at 217 Arthur Street, Peoria, Ill.?

'A. Yes, sir.

Q. And prior to this strike, you were a hostler, is that right?

A. Yes, sir.

Q. And now you are an engineer.

A. Yes, sir, I guess so.

Q. You have been doing an engineer's work, is that right?

A. Yes, sir.

Q. Are you one of the men that has been promised a \$10.00 a day extra bonus?

A. I wasn't promised by nobody, no.

Q. Did someone mention it to you?

A. Yes, sir.

Q. Who did that?

A. Some of the employees said we was getting it.

Mr. Heyl: I move to strike that as not binding upon the plaintiff.

The Court: 'Oh, I think if may stand.

Q. And, as a hostler, had you ever taken this run to Hamilton before?

A. No. I have firing, though.

Q. You have fired it?

i. Yes.

Q. How many years before?

336 A. Well, 1917, 1918, and I fired over there for Dick Flessner along in 1924 or 1925.

Q. Who is Dick Flessner?

A. He used to be an engineer on the T. P. & W.

Q. And you fired there in 1924 or 1925?

A. Somewhere along in there. I wouldn't say when, but I made a trip with him over the road not so long ago.

Q. What was the last time you were over this road? I mean prior to the occasion of your being an engineer.

A. Well, I was over there not long ago. I brought in a train with Verd Kirk from Canton. That was the last time I was over there.

Q. And when was that?

A. Well, I don't know.

Q. I am just trying to get an approximate date. Two, three or four months ago?

A. No, it has been a year or so ago.

Q. Outside of that one occasion, you haven't been over that road since about 1924 or 1925, is that right?

A. No, it was later than that.

Q. When?

A. I can't just recall the year. Q. What is your best judgment?

A. Well, I would say 1927.

Q. 1927!

A. Yes, or 1937.

Q. Who were you with on that occasion?

A. Verd Kirk.

Q. You just went over it once on that occasion?

A. I went over to Canton and brought the train in. 337 The fireman got sick.

Q. On the morning of December 31, 1941, you left the T. P. & W. yards at 7:30 A. M., is that right?

A. Somewhere around there, yes, sir.

Q. And you say that some stones struck the cab of the engine when you went under the viaduct, is that right?

A. Yes, sir.

Q But you did not see anyone throw those stones?

A. No, sir.

Q. And how many stones were thrown on that occasion!

A. Oh, I couldn't tell.

Q. What is your best judgment? A. There was hundreds of them.

Q. There were hundreds of them, is that right?

A. Yes. They followed me to Canton, and there certainly was.

Q. I am talking about this viaduct.

A. Oh, well, I don't know; a dozen or so.

Q. A dozen or so, and when you looked back there were only two men you saw? That was W. J. Christoff and Herman Siebenthal, the only two you saw?

A. Yes, sir.

*Q. If there was a dozen stones hit you, those two gentlemen would have to throw six apiece?

Mr. Heyl: I object; argumentative. The Court: Yes, it is argumentative.

Mr. Knoblock: All right!

Q. How much time would you say elapsed from the time you first noticed it until it was over?

A. Oh, I don't know; two or three, or a couple of minutes, anyhow.

238 Q. And you didn't turn to look where they were coming from during that entire period of two minutes?

'A. No, sir.

Q. You did not? And at Washington Street crossing you saw Feuger and Reiman, is that right?

A. Yes, sir.

Q. And Feuger drew back the club, but he didn't throw it?

A. Mr. Feuger didn't.

Q. I mean Reiman didn't! I am wrong on the name.

A. That's right.

Q. What's that?

A. You're right now.

Q. And Feuger pointed his finger at you?

A. Yes, sir.

Q. Now, as you went on down south, then, you say you saw some men riding along in Jerry Underwood's car, is that right?

A Yes, sir.

Q. Who were those men?

A. Well, he's the only one I could recognize in the car until they could get out.

Q. You don't know who was riding in the car until you got on down the road further, is that right?

A. Yes, sir.

Q. Where did you first recognize who they were?

A. Well, when I first recognized them riding in his car was, oh, down at the crossing just this side of Mapleton.

Q. That is what we call the Wheeler crossing?

A. Yes, sir.

Q. Now, as you got to Cedar Street—the first street 339 the other side of Cedar Street—you claim that there is where you saw Gabbert throw a stone or something to break the headlight of the engine, is that right?

A. Yes, sir.

Q. Now, how was Gabbert dressed that day?

A. Well, I don't know. He had on kind of a dark suit. That is all I can tell you.

Q. How long have you known Gabbert?

A. Oh, for several years; ever since he worked:-

Q. Do you know him pretty well?

A. Well, I am not chummy with him, just saw him working around there.

Q. You saw him working around there for several years?

A. Yes, sir.

Q. You would be able to identify him anywhere?

A. I think so.

Q. And the man you saw in front of the engine that day you are positive was Gabbert?

A. Yes, sir.

Q. You didn't see anybody else in front of the engine when you claim Gabbert was there?

A. No. sir.

Q. Now, Lawson was along with you on that occasion, is that right?

A. Yes, sir.

Q. What is his first name?

A. Ernie.

Q. What is his position down at the T. P. & W.?

A. Huh?

Q. What is his position down there?

340. A. Well, he's a, oh, road foreman, roadmaster.

Q. You say that Underwood said to Lawson to get out of the way, that he wanted to kill you, is that right?

A. Yes, sir.

Q. He didn't do anything right there that would indicate he was going to carry it out, did he?

A. No, sir.

Q. He didn't come up and try to get in the cab, did he?

A. No.

Q. As far as you know, he never threw anything there!

A. I didn't see him throw.

Q. The only man you saw there was Gabbert at that crossing?

A. Yeah.

Q. When you brought your train to a stop at Hollis, the cab of your engine was where, now, from the telephone booth?

A. Well, I would say it was a couple of car lengths beyond.

Q. Beyond?

A. Beyond the little shanty.

Q. You mean south?

A. Maybe farther.

Q. How many feet would that be?

A. Oh, it would be about eighty feet.

- Q. And who was in the cab at that time as you came to a stop there?
 - A. Well, the conductor and Lawson and I.
 - Q. The conductor, what was his name?
 - A. Carnarius:
 - Q. Lawson and you and anybody else?
 - A. Taylor, the fireman,
- Q. Taylor, the fireman, and that is all?
- 341 A. Well, there was several others on there, but I don't know their names.
- Q. There were several others? How many others were there?
- A. I had a student fireman and a student brakeman. That was two more. That's all that I know of.
- Q. There was no other people there but those you have mentioned here now?
 - · A. No. sir.
 - Q. And you are sure of that?
 - A. Well, not positive, but that's all I know of.
 - Q. That's all you remember?
 - A. Yes.
- Q. Don't you remember the guard that was carrying a gun there that day by the name of Kane?
- A. Well, there was a guard on there, but I couldn't tell you his name.
 - Q. He was in the cab there with you, wasn't he?
 - A. Yes, I think he was.
- Q. And he rode all the way from East Peoria to Hamilton with you there in the cab, didn't he?
 - A. Yes.
 - Q. And that man's name was Kane?
 - A. I didn't know his name.
 - Q. And he carried a gun, didn't he?
 - A. I couldn't swear to that.
 - Q. You couldn't?
 - A. No, sir.
 - Q. All right, but you knew he was a guard?
- A. Yes, sir.

 342 Q. Now, did anyone get out of the cab outside of Carnarius there at Hollis?
- A. I couldn't say. I don't think they did.
- Q. And where— How long was Carnarius gone when he left the ab?
 - A. Oh, I would say three or four minutes.

Q. And how long did you stop there!

A. Well, not any longer than he got back and told me to go. As soon as we could get started, we went.

Q. You started right out, is that right?

- A. Yes.
- Q. And as soon as he went down to the phone booth and made a call and he came back and got in the cab, you went on then toward the hard road crossing, the Wheeler crossing, down toward Canton?

A. Yes, sir.

Q. You say there was bricks thrown down there, but you did not see who threw them?

A. No.

Q. Did any of the people in the cab try to see who it was?

A. I couldn't say.

Q. You couldn't say?

A. No, sir,

Q. You didn't observe anybody in the cab try to observe who was doing it?

A. No, sir, I was busy.

Q. You were busy? Do you know where they were coming from down there that day?

A. They was coming between those cars.

Q. They were coming from between those cars, but 343 you did not see who threw them?

A. No, sir.

Q. What did the guard do while you were there?

A. Nothing.

Q. He stayed in the cab?

A. Stayed in the cab.

Q. Did anyone protest the action of the men that were throwing?

A. No, sir.

Q. Then you went on down, and where did you say that Underwood hit you with a brick?

A. On the Wheeler crossing.

Q. On the Wheeler crossing, and at the same time there was Gimming and Gabbert there also, is that right?

A. Yes, sir.

- Q. Having completed that un, have you at any time ever complained to any public officials or authorities concerning that fact?
 - A. Nobody but my lawyer here. Q. You told you lawyer about it?

A. Yes, sir.

Q. But you never told any law-enforcement officer or public official?

A No, sir.

Q. And you have never asked any law-enforcement officer or public official to do anything about it?

A. No. sir.

Q. Going back in the day of January 1, 1942, you say on one or two occasions that evening there were some rocks thrown, but by whom you absolutely had no idea?

A. On what date?

344 Q. January 1, 1942.

A. No, I don't know who threw them.

Q. So on this trip the only men that you actually saw throw anything are Gabbert,—

A. Yes, sir.

Q. -Underwood,-

A. Yes, sir.

Q. -and Gimming?

A. Yes, sir.

Q., Those three!

A. That's the three.

Q. Are you a member of the B. of L. F. & E.?

A. I was.

Q. Did you vote for the strike?

A. Yes, sir.

- Q. After these bricks and rocks that you mentioned running up, would you say, during the entire trip into two or three hundred?
- A. Yes, altogether. Wait a minute. Not two or three hundred; a hundred, I said.

Q. A hundred?

A. Yes.

Q. That is all that you can recall having hit that cab from the time you first noticed it at the viaduct, and then at the Cedar Street crossing, then at Hollis and at the Wheeler crossing and at Canton, that entire trip back, and coming back this other way? About a hundred rocks is your estimation of what was thrown?

A. ,I would estimate it at that, yes.

Q. And the engine or train was not disabled so it could not be run, and completed its trip?

345 A. No.

Q. Is that right?

A. Yes.

Mr. Knoblock: I think that is all.

The Court: Anything further with this witness?

Redirect Examination by Mr. Heyl.

Q. What was the condition of the headlight on the trip back from Hamilton?

A. Well, it broke the light out and part of the reflector, the top part, but didn't break the bulb. When night come, I had light. Of course, it wasn't as good as if the whole reflector had been in there, but I still had a light.

Mr. Heyl: That's all. The Court: That's all?

I expect we had better stop at this point.

Let me see you attorneys, if I may.

(Discussion off the record.)

Trial Adjourned at 5:10 o'clock P. M.

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January 10, 1942.

Trial Resumed at 10 o'clock A. M.

Appearances:

Same as before.

ERNEST ALFRED LAWSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Ernest Alfred Lawson.

Q. Where do you live, Mr. Lawson?

A. LaHarpe.

Q. Illinois!

A. That's right.

Q. And what is your business or occupation?

A: Roadmaster.

Q. How long have you been roadmaster?

A. Since September 1, 1937. :

Q. And you have been constantly employed by the rail-road since that?

A. That's right.

Q. How old are you?

A. Thirty-five.

Q. On December 29, 1941, were you on extra 43 west?

A. I was.

Q. I will ask you what, if anything, you observed as you approached the New Philadelphia hill on that railroad?

A. The rails were either greased or soaped or some-

2. What happened?

A. Well, we were going up the hill at a very good rate of speed for that hill, and the train wasn't heavy. I would say we were going twenty miles an liour, and the engine wasn't working hard, and we hit a spot about ten rail lengths west of the crossing, and the engine flew up and I thought for a moment it wasn't going to catch itself. There must have been something wrong. After we got by that two rail lengths, we got up the hill.

Mr. Knoblock: I object to that two rails part. It is

speculation on the witness's part.

Q: Where were you riding!

A. Behind the engineer on the west hand side.

Q. You have ridden on engines during the course of your employment?

A. That's right.

Q. And on that day did you observe the distance that the engine experienced this difficulty?

A. Well, I would say it was three rail lengths before it

caught itself.

Q. And was there any other place on the railroad that day that you observed this movement of the engine?

A. No, sir.

Q. Mr. Lawson, from your experience as a railroad man, do you have an opinion as to what would have been the result in this condition of the rails if the engine had been traveling at a high trate of speed?

Mr. Knoblock: I wish to object to that;

The Court: I think the objection ought to be sustained.

I haven't seen any qualification of this man. :

348 Q. How long have you been working at your present employment?

A. You mean as a track man?

Q. Yes, sir.

A. Fourteen years; nine months and eight days.

Q. During that period of time, have you had experience in railroads in observing the movement of locomotives on smooth tracks?

A. I have.

Q. Or on greased or soaped tracks?

A. That's right.

Q. And how much of the time have you ridden on locomotives in the performance of your duties as a track man?

A. Off and on ever since I have been there.

Q. And, from that experience, are you able to determine the cause of the slipping of the engine and the wheels on the tracks?

A. Well, I have my idea of it.

The Court: That isn't the question. Have you observed it?

Q. Have you observed it?

A. Yes.

Q. And, from that observation and experience, are you able to determine what is the cause of the sliding of the wheels on a track?

A. Yes, sir.

Q. And did you— Have you an opinion, based upon your knowledge and experience and the observation that you made of this engine on the day in question, as to what caused the sliding of that engine at that New Philadelphia place you have indicated?

A. Yes.

Q. What is your opinion?

349 Mr. Knoblock: I object to that.

The Court: I think he may answer. It is an opinion.

A. From the speed it was traveling and no harder than it was working, it is very evident to me the rail was soaped or greased, or something was on the rail.

Q. That kind of substance?

A. That's right.

Q. Have you an opinion, based upon your experience and observation that day of the movement of that engine, what the result would have been if that engine had been pulling a heavy load and traveling at a higher rate of speed than you have indicated?

Mr. Knoblock: We object to that. The Court: /I think he may answer.

A. The drivers might have derailed the engine.

Mr. Knoblock: Move it be stricken.

The Court: Yes, I think it may. He is asking for an opinion.

Q. What would have happened, in your opinion?

A. It would have derailed.

Q. Derailed what?

A. The engine.

Q. Now, were you on extra 43 west on December 31, and extra 43 east on January 1, 1942?

A. I was.

Q. In what capacity?

'A. Well, pilot I think you would call it.

Q. What is a pilot? What is the meaning of that?

A. He's the man that shows you over the road and keeps you out of trouble, and how to go through the interlocking—

350 Q. What is it?

- A. The junction points where you cross other railroads.
 - Q. Where does the pilot ride on the train?

A. I rode behind the engineer.

Q. Is that the usual place?

A. Yes, sir.

Q! That is where you rode!

A. That's right.

- Q. Now, at the Nickel Plate crossing in East Peoria, when this train was returning to East Peoria on January 1, 1942, did you observe any of the defendants throwing stones at the train?
 - A. As we were returning?

Q. Was it returning or going out?

A. Going out.

Q. That is on the 31st, '41?

A. That's right.

Q. Will you tell me the names of the defendants whom you observed throwing stones at that point?

A. At that one point? Bill Christoff.

Q. W. J. Christoff?

A. That's right.

Q. Did you see G. L. Underwood there?

A. I did not.

Q. Did you see any of the rest of the men?

A. There were more there.

Q. Did you recognize them either by name or by appearance as former employees of the railroad?

A. Well, yes and no. I saw their faces, but I am not sure.

Q. Now, did you have any experience at Swords' 351 crossing or Swords' Siding, rather, in East Peoria?

A. We did.

- Q. Did you recognize any of the ones there that threw-stones?
 - A. Christoff and Jerry Underwood.

Q. G. L. Underwood?

A. Yes.

Q. And at the Cedar Street bridge what happened.

A. We were stoned, but I didn't get a chance to see any of them.

Q. What was the extent there?
A. The question again, please.

Mr. Heyl: I will withdraw it, and ask another question:

Q. What was the extent of the stoning of the train at that point?

A. Well, I would say there were twelve or fifteen stones.

Q.: Was anyone hit?

A. I believe not.

Q. Now, were you at Persimmon Street? Did anything happen there?

A. Not going out on the 31st.

Q. At Hollis?

A. Yes.

Q. What happened there?.

A. We stopped to sign the train register, and we were stoned.

Q. Anybody hit?

A. Yes.

Q. Who was hit?

A. Carnarius was hit in the mouth.

Q? You saw that, did you?

A. I did.

Q. Did you observe the persons that were throwing 352 stones or bricks at the train?

A. The only ones that I saw was Christoff and Underwood.

Q. Were they there at that point?

A. They were.

Q. Now, at Wheeler crossing between Hollis and Mapleton, or at the Pekin road, did you observe anything at the Pekin road?

A. I did.

Q. What did you observe there?

A. We were again stoned by Underwood and Christoff, and I took it to be Reiman, but I am not positive. He was a little fellow, and I would like to withdraw that because I am not positive of that. I was concentrating on Underwood.

Q. Where were these men?.

A. Underwood was standing at the—on the right hand the of the engine at the west side of the slab, so close I thought we were going to hit him. He wasn't over eighteen inches from the cylinder, I don't believe.

Q. That was where?

A. At the Wheeler crossing.

Q. What did he do there?

A. He threw a brick through the small glass in the front of the cab. It's about eight inches by nine and a half, and his larry Ward, the engineer.

Q. What happened to Ward?

A. He just kind of sagged at the knees and leaned forward, and I asked him if I should shut it off, got the throttle in one hand and put the other under him, and he sagged between the boiler and the side of the cab. He couldn't say

anything. I asked him if I should shut it off, and he 353 didn't say anything, and I waited a minute and said,

"Larry, shall I shut her off??" and he shook his head like that (demonstrating); and the engine drifted along.

Q. How long did the engine run without the engineer handling the throttle? How long did it run?

A. I would say a minute and a half.

Q. Now, what part of his body was hit? You saw what

happened?

- A. It looked to me as though he was hit in the groin (it was a whole brick), and maybe with the other end of it in the short ribs.
 - Q. What happened to the brick? Did you see it?

A. I did.

Q. Where was it?

A. In the cab.

Q. Now, who threw that brick? .

A. Gerald Underwood.

Q. That is one of the defendants in this case?

1. That's right.

Q. Were any of the other persons, one of the other defendants, present at that time?

A. Christoff is the only one that I can identify.

Q. W. J. Christoff?

A. That's right.

Q. What happened at Glasford?

A. We were stoned.

Q. Did you see the persons there that threw the stones?
 A. I was on the opposite side of the cab. I saw no one.

Q. That is, that was from which side of the cab you were stoned?

·A. We were stoned from the left side of the cab.

354 Q. Where were you riding?

A. I was riding behind the engineer on the right side.

Q. Now, what happened at Canton?

A. Were stoned again.

Q. Did you see any of the persons there?

A. I did not.

Q. What was the extent of it?

A. I would say twenty stones or bricks. Q. What part of the train did they strike?

A. The engine; the cab.

Q. Where were you?

A. Behind the engineer.

Q. Did you stop at Canton?

A. We stopped for the crossing.

Q. You mean after you got past the crossing?

A: We did not.

Q. The next stop was at Bushnell?

A. Cuba.

Q: Did anything happen between Canton and Cuba!

A. Nothing.

Q. Or beyond Cuba?

A. Nothing.

Q. You returned to Peoria on January 4, 1942, I believe!

A. That's right.

Q. Did anything happen on that trip? The return trip?

A. We were stoned at the crossing (I believe Persimmon Street) coming in.

Q. Did you see the men that stoned the train!

355 A. I did not.

Q. Where were you riding?

A. Behind the engineer.

Q. What was the condition of the windows in the cab and the headlight?

A. They were broken out. The headlight was also broken out, and part of the window frames were broken out.

Q. Did you see the headlight broken out on that locomotive?

A. I did.

Q. Where did that happen?.

A. At Cedar Street.

Q. When?

A. Going out the 31st.

Q. Did you see the person that threw the brick?

A. I did, but I couldn't recognize who it was.

Q. Couldn't identify him?

A. No. sir.

Q. That was in the daytime, was it?

A. That's right.

Q: Was there anything happened after you left Persimmon Street on your way to the yards in East Peoria?

A. Nothing.

Q. Did you recognize any of the persons at the various incidents, you have referred to as employees, former employees, of the T. P. & W.?

A. I did.

Q: Is that true in each case?

A. That's right.

Q. Do you know C. S. Gabbert!

356 A. I do,

Q. Is he in the court room?

A. . I don't see him.

Mr. Heyl: All right. Cross-examing.

Class-Examination by Mr. Knoblock.

Q. Mr. Lawson, how long have you lived at LaHarpe?

A. Five years.

Q. And how long have you been employed by the T. P. & W.!

·A. Fourteen years, nine months and eight days:

Q. 'Where did you live before you went to LaHarpe! .

A. Mapleton.

Q. Now, on December 29, 1941, did I understand that you were on what is known as extra 43 west? Is that right?

A: No that isn't right.

Q. What? December 29, 1941, you were on what is known as extra 43 west?

A. You said "41 west", didn't you?

Q. 43.

A. Yes, that's right.

Q. Then you spoke something about the New Philadelphia hill. Where is that?

A. You want the mile post? Our mile post?

Q. No, I would like to identify it in a different manner than that. Is it near Peoria, or where is it?

A. No, it's about two and a half miles east of New

Philadelphia.

Q. What county is that in?

A. Fulton, I believe.

Q. And what other city is near there besides New Philadelphia?

357 A. Marietta, Smithfield, Seville, Bushnell,

Q. Now, at that time when you were riding in that cab, you say Larry Ward that day was the engineer?

A. That's right.

Q. You were the pilot?

A. That's right.

Q. Who was, the fireman?

A. Taylor.

Q. What is Taylor's first name?

A. They call him Bert. I don't know whether that is his full name or not.

Q. Bert Taylor?

A. That's right.

Q. Do you know where he lives? ...

A. Hamilton.

Q. Was he riding on the train that same day that you were?

A. He was.

Q. He was riding in the cab of the engine when you struck New Philadelphia hill?

A. That's right. No.

Mr. Heyl: What is it?

A. That isn't right.

Mr. Heyl: Then make it right.

A. Ed Tucker was fireman.

Q. Tucker was?

A. That's right.

Q. You'say - What is Tucker's first name?

A. Ed is all I knew him by.

Q. And who else was in the cab there with you?

A. A special agent from Bushnell by the name of Kane, Bill Kane.

Q. Does Bill Kane live at Bushnell?

- A. Yes.
- Q. He does?
- A. He does.
- Q. All right! Who else? A. That's all I can recall.
- Q. There was some others in there, wasn't there?
- A. Yes, I am sure there was.
- Q. How many were there, in there, altogether?
- A. About six.
- Q. How long has Kane lived in Bushnell?
- A. I couldn't tell vou.
- Q. Kane was not a special agent before this date of December 29 for the T. P. & W., was he?
 - A. I-couldn't tell vou.
 - Q. Do you know who hired Kane?
 - Mr. Heyl: I object to that as immaterial.
 - The Court: Yes, I think it is.
 - Q. Now, Kane was armed that day, wasn't he?
 - A. I never saw any arms at all.
 - Q. You never saw him carrying any gun at all?
 - A. I did not.
- Q. And you were with Kane all the way over to Hamilton and Keokuk, Iowa, and back? He came back with you, didn't he?
 - A. He didn't ride the engine back.
 - Q. He rode the caboose back?
 - A. Yes.
 - Q. And another special agent took the engine?
- 359 . A. Yes.
 - Q. What was his name?
 - A. I don't know.
- Q. Now, with reference to this New Philadelphia hill, how fast were you going when you struck that hill?
 - A. I would say twenty miles an hour.
- Q. And you at no time ever inspected the tracks or the rails there, did you?
 - A. Before we hit them?
 - Q. Yes.
 - A. No.
 - O. You never inspected them afterwards, did you?
 - A. No.
- Q. And you haven't even inspected them to this day, have you?
 - A. No.

If they had been greased or seaped rails on your way back, you could have inspected them, and there still. would have been evidence of that there, wouldn't there?

I doubt it.

You doubt it?

A. I do.

Q. Had it rained in the meantime?

There had been several wheels over them.

Q. Wouldn't there have been some evidence of greasing or soaping those rails?

A: It depends on how much is put on.

I see. How many other times in four experience have you had greased or soaped rails?

A. I can't remember any under these circumstances. This is the first time you can ever recall of

having greased and soaped tracks?

A. Oh, no. On Ys and tracks we have greased, but none that weren't supposed to be greased.

Q. You say the engine flew up, as I understood you to testify. What do you mean by that?

A. The drivers started spinning.

Q. And continued for a distance of how long?

About three rail lengths.

When you got to Hamilton or Keokuk, did you notify the Peoria office of that condition?

No. sir.

You didn't regard it important enough to notify any other trains going over the location of that condition?

Mr. Elliott: I object to that as improper.

The Court: I think he may answer.

A. Answer?

The Court: Yes, answer.

A. No, because the next train over, nothing would prob-

ably happen. The wheels had taken the soap off. Q. I see, You say if the engine had been going any faster it might have derailed. That's just a guess on your part, isn't it?

That's right, a matter of opinion.

Is it an opinion or guess?

It's an opinion.

You don't know how much faster a train would have to be going to cause that result, would you?

How, much harder it was pulling would make a difference.

- Q. You don't know how many cars that would take?
- Q. And on this particular morning had it been snowing any?

A. I believe not.

Q. Does snow or frost on the rails make any difference sometimes?

A. It does.

Q. It was cold weather, wasn't it?

A. It was.

Q. And the rails might well have been pretty frosty that morning?

A. It seems that there would have been frost all the way up the hill instead of the three rails.

Q. You don't think the frost would have anything to do with it that morning?

A. I do.

Q. If they were greased or anything of that kind, you don't know who did it?

A. No.

Q. You never took the occasion to inspect them there to see if that were actually the case?

A. No.

Q. At the Smithfield hill you have an automatic greaser there, haven't you?

A. Not now.

Q. You did have?

A. That's right.

Q. And trains always go up that at high speed, and never derail?

A. Not at high speed.

Q. They go twenty miles an hour?

A. Yes, sometimes.

Q. That what you say you were going here?

362 A. That's right.

Q. And you considered that a high speed here, didn't you?

A. That's right.

Q. And going twenty miles an hour where this automatic greaser is on Smithfield hill?

A. No, but engineers are looking for something like that when he is pulling hard.

Q. It doesn't make any difference whether you are looking for it or not, if you have the same number of cars

and are going the same rate of speed? Wouldn't that be true?

A. I think not.

Q. Just the fact you were looking for it would make a difference?

A. It would

Q. Now, on extra 43 west December 31 and extra 43 east January 1, you were acting on both of those trains as pilot?

A. That's right.

Q. You had armed men on both of those trains, too, did you?

A. Not to my knowledge.

Q. You say you had special agents there?

A. That's right.

Q. Were they unarmed?

A. I couldn't say.

Mr. Heyl: He has answered that two or three times.

The Court: I thought he had.

Q. At the Nickel Plate crossing in East Peoria on December 31, 1941, you were riding in the cab as pilot?

A. I was.

Q. And you say you saw Bill Christoff there?
A. That's right.

363 Q. Where did you see him?

A. Standing just west of the viaduct about fifty foot.

Q. What time of day was it?

A. 9:30, something like that; close.

Q. Was there anybody else with him?

A. I didn't recognize anybody else.

Q. And who was the engineer on that train?

A. Larry Ward.

Q. It's a fact Ward thumbed his nose at Christoff there!

A. I didn't see him.

Q. And some of you fellows were yelling out at the men, "Suckers"?

A. I didn't hear it.

Q. That's a fact, isn't it?

A. No, it isn't.

Q. Now, at Swords' Siding you say again you saw Christoff and Underwood?

A. That's right.

O. Did you see Larry Ward shake his fist out, the window and yell, "Sucker"?

A. I was carrying on a conversation with Christoff, I. did not.

Q. You were carrying on that conversation with Christoff? Sort of a heated conversation, wasn't it?

A. It was not.

Q. Very pleasant?

A. Well, I wouldn't say "pleasant".

Q. I see. Some pretty hot words were going back and forth, isn't that right?

A. Not on my part.

Q. Not on your part?

364 A. I couldn't hear all that Bill said.

Q. Now, at the Cedar Street crossing you don't know who was there at all, do you?

A. I do not.

Q. At Hollis you saw Christoff and Underwood there?

A. That's right.

Q. They were the only two that you saw there?

A. The only two that I saw.

Q. You didn't see any of the fellows in the cab thumb their noses at them there?

A. No, I didn't.

Q. You didn't do it yourself, of course?

A. No, I didn't.

Q. On the Pekin road the only two you saw again were Underwood and Christoff?

A. At Wheeler crossing?

-Q. Pekin road.

A. I saw no one at Pekin road:

Q. You saw no one there? At the Wheeler crossing, the only two you saw were Underwood and Christoff?

A. There were more there, but those were the only two I recognized.

Q. The only two you recognized, is that right?

A. That's right.

Q. And at Glasford you didn't see anybody there?

A. I did not.

Q. At Canton you didn't see anybody there, either?

A. No, sir.

Q. Are you one of the men that has been promised a \$10.00 bonus in case this thing goes through?

365 A. Not to my knowledge.

Q. Not to your knowledge? Have you heard any talk about it?

Mr. Heyl: I object to that as not proper cross-examination.

The Court: A \$10.00 bill if this case goes through?

Mr: Knoblock: \$10.00 a day bonus.

The Court: \$10.00 a day for working? He may answer. He has answered.

Mr. Heyl: He answered that.

The Court: All right! Go ahead!

Q. Now, on December 31, 1941, at Cedar Street where you say the headlight was broken, you don't know who did that?

A. I don't.

Q. Do you know Gabbert?

A. I do.

Q. Well, it wasn't him, then, was it?

A. It could have been, but I am not saying it was. I saw the man throw the rock, but that is all. I just saw his arm go up and throw the rock. I didn't recognize him.

Q. You didn't recognize him?

A. I did not.

Q. You know Gabbert pretty-well?

A. I do.

Q. Don't you think, if it had been Gabbert, as well as you know him you would have recognized him?

A. I would have if I could have seen him.

Q. But you didn't see him? Just saw him raise his arm?

A. That's all. Just saw the man throw.

Q. Now, directing your attention, Lawson, to Hol-366 lis, where was the train brought to a stop there?

A. I would say three car lengths west of our switch at the crossing of the P. T.

Q. That was the engine?

A. That's right, the engine.

Q. Now, who left the cab there?

A.- Carnarius.

Q. Anyone else?

A. I don't remember.

Q. You say you saw Underwood and Christoff there?

A. That's right.

Q. On which side of the engine were they?

A. On the right hand, the west side of the engine.

Q. Where were they standing?

A. Between two cars:

Q. And how many rocks were thrown there?

A. Twenty-five or thirty.

Q. Twenty-five or thirty? And when? How long was Mr. Carnarius gone?

A. Five minutes, I would say.

Q. And when he returned, did you start toward the Pekin road?

A. Well, the air kind of stuck a little bit. We had just a little bit of trouble getting started, but we did. We left as soon as we could.

Q. And, as I understand it, the engineer is on the right

front of the cab, is that right?

That's right.

Q. And you were behind him?

A. That's right.Q. Now, where were the other men stationed in that cab?

A. We had a man from LaHarpe by the name of Reed.

Q. By the name of what?

A. Reed, sitting on the head brakeman's seat.

Q. Which side of the cab is that?

Left side.

Q. That's on the left side?

That's on the left side; and the special agent was sitting behind him.

Q. Sitting behind him on the left side?

That's right; and the fireman was standing in the gangway in the middle,-

Q. Was standing in the middle?

A. —and that is all I can tell you about it.

Q. Where was Carnarius when he came back? Where did he place himself?

A. I couldn't say.

Q: Do you know where he was standing?

A. No. I don't.

Q. When two men are on the side of a train like you and Ward were on the right side, and where the fireman and special agent were on the left side, you take most of the space on that side of the cab?

A. The fireman wasn't on the left side.

Q. Which side was he on?

A. He was in the middle. Q. He was in the middle?

A. That's right.

Q. A man from LaHarpe, you say, was on the left front?

368 A. That's right.

Q. And sitting behind him was the special agent, and that takes up most of the space on that side of the cab doesn't it?

A. Yes, most of it.

Q. And the same thing would be true of the right side when you and Ward were in your positions?

A. Yes.

Q. And the same thing would be true in the middle?

A. No.

Q. It would not?

A. It would not.

Q. When Carnarius got off and came back, he got off and came back both times on the left side of the train, didn't he?

A. He did.

Q. And were stones being thrown at the train while Carnarius was gone?

A. There were.

Q. How many would you say were thrown at the cab while he was gone?

A. A dozen.

Mr. Knoblock: I think that's all.

Mr. Heyl: I want to ask one or two questions.

Redirect Examination by Mr. Heyl.

Q. What is the length of a rail?

A. If you are referring to the one on Smithfield hill, thirty-one foot.

Q. And the total length of this sliding would be about ninety-three feet?

369 A. Ninety-three, that's right.

Q. Now, you were asked with reference to the automatic grease machine at Smithfield,—

A. That's right.

Q. —is that the place? What is the purpose of that machine? What part of the equipment is greased?

A. The flanges.

Q. Where is the flange?

A. It's the side of the wheel that holds it on the rail.

Q. And does that machine put any grease on the face of the rail, or the top of the rail?

A. It doesn't, unless it is working entirely too hard.

Q. And does the grease on the flanges have any effect upon the sliding of the wheels?

A. Very little.

Q. Now, you referred to a conversation with Christoff at the Swords' Siding. Will you tell the court what Christoff said to you, in words or in substance?

A. Well, Christoff merely asked me to get out of the engine. I didn't take it that Christoff was tough at me

at all.

Q. What else did he say?

A. Well, there was so much going on around there I really can't tell you.

Q. What did he say about you getting out of the engine?

A. He said I would get hurt if I didn't get out.

Q. What did you say to him?

A. I said I wasn't sent out there to get out of the engine, and I wasn't getting out.

Q. Did you see Ashburn on either of these runs? A

· A. He was head brakeman.

Q. What's that?

A. He was head brakeman.

Q. Did you see him?

'A. That's right.

Q. In any of these stoning incidents that occurred?

A. That's right.

Q. Did you observe whether or not he got hit?

A. I did not. 5

A. No.

Mr. Heyl: I guess that's all.

The Court: Is that all?

Call the next witness.

371 CLARENCE HARVEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Clarence Harvey. Q. How old are you?

A. Twenty-two.

Q. Where do you live?

A. 318 Cole Street, East Peoria.

Q. What is your business or occupation?

A. I work for the T. P. & W., traffic department.

Q. How long have you worked for the T. P. & W.1

A. About two and a half years.

Q. And in what capacities have you been employed!

A. Well, I started first as a freight trucker, and I was O. S. & D. clerk and assistant accountant, and I am the traffic clerk.

Q. What is the O. S. & D. department?

A. Over, shorts and damages.

Q. On December 31, 1941, did you have anything to do with the operation of extra train 43 west?

A. I went along on the caboose as one of the helpers

to show the conductor how to make out his forms.

Q. Did you ride the entire distance that that train traveled that day?

A. Yes.

Q. I will ask you if you observed on that trip any stoning of the train.

A. Yes, we did.

372 Q. At what point or points?

A. Well, the first point that I remember was under the viaduct in East Peoria, and the next was at East Washington Street crossing, and after we crossed the bridge down there by Persimmon Street, and then all the way to Canton there were three car loads of pickets that followed.

Q. You mean from that point on to Canton? Is that what you mean by "all the way to Canton"?

A. At every cross road or junction where there was a

crossing.

Q. What did you observe there at each of those places!

A. There was fellows standing out there, and they threws stones at the caboose and the engine as we drove past.

Q. Did you recognize any of the men that you saw at

these various points?

A. No, I am not acquainted with anyone of them.

Q. Can you recognize them as former employees?

A. No, I couldn't.

Q. Were they or not the same men at the various crossings?

A. We could tell by the cars.

Q. Did you observe the cars!

A. Yes.

Q. What kind of cars were they?

A. One was a '41 Pontiac, and I think one was a '36 Oldsmobile, and one was a coupe.

Q. There were three cars?

A. There were three cars.

Q. How many times did you see these cars at the

various crossings between Peoria and Canton!

A. I can't remember the number of times, but we 373 could see the cars following the train at every crossing.

Does this railroad parallel the road between Peoria

and Canton?

A. Part of the way, yes.

Q. What damage, if any, did you observe to the train?

A. You mean to the caboose where I was!

Q. Yes, to what part of it.

A. There was only two windows that was left in the caboose by the time we got to Hamilton, and it knocked out several window frames.

Q. Was the caboose in normal condition when you left

the yards?

A. Yes, it was.

Q. The lights all in?

A. Yes.

Q. And you rode in the caboose all the way, did you?

A. All the way.

Q. Did any of the bricks or stones come into the ca-

A. Yes, several of them.,

Q. Will you describe them to the court, as to what they were?

A. They were large stones, most of them, and half of brickbats.

Q. Now, on the return on January 1, 1942, you left Hamilton at what time?

A. Well, it was—on the return trip it was about 10 o'clock, I imagine.

Q. That train was known as extra 43 east, wasn't it?

A. Extra 43 east, yes, sir.

Q. Did anything occur on the way home?

A. Not until we got to Peoria.

Q. What occurred from that time on until you reached the yards in East Peoria?

374 A. We had one stoning in Peoria, and two in East Peoria.

Q. On the way out the day before, did you see the breaking of the headlight?

. No, I didn't.

Q. Did you observe the headlight after you got to Hamilton?

A. Yes.

Q. What did you observe? A. The lens was broken out.

Q. Was the headlight of the locomotive intact before; you started out?

A. Yes, it was.

Q. Was there any portion that train broken before you started?

A. Not that I noticed.

Q. Do you recall what the character of the load was as you went into Keokuk, Iowa, on the morning of January 1, 1942?

A. No, I don't.

Q. Do you know what the cars were, or did you pay any attention?

A. I didn't pay much attention. There were empties

and several loads.

Q. You did take several cars from Hamilton, Illinois into Iowa?

A. Hamilton, Illinois, into Iowa?

Q. Yes.

A. . No. .

Q. What did you take into Iowa from Hamilton?

A. I couldn't rightly say.

Q. Was there anything besides the caboose and the engine?

A. No, I believe it was just the caboose.

Q. What did you take out? Do you know, or did you pay any attention to that?

375 A. No, I didn't.

Q. Who was the conductor?

A. Mr. Carnarius, Clarence Carnarius.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. You live at 318 Coale Street, East Peoria?

A. That's right.

Q. How long have you lived in East Peoria?

A. In East Peoria about ten or twelve years.

Q. Ten or twelve years, and you have been with the T. P. & W. for two and one-half years, is that right!

A. Yes.

Q. What type of work did you say you first did when you went in there?

A. Freight trucker.

Q. Prior to this strike, what type of work were you doing?

A. Traffic clerk.

Q. Traffic clerk, you say.?

A. Yes, sir.

Q. What is the nature of your duties as traffic clerk?

A. Well, it is mostly filing statements and tariffs.

'Q. What's that, again?

A. It is mostly a job of filing statements and tariffs and learning rates.

Mr. Knoblock: Will you read that?

(Answer readaby reporter.)

Q. When were you first notified that you were to go on this extra 43 west?

376 A. December 30.

Q. And who so notified you?

A. Mr. Slater.

Q. Who is he?

A. Chief clerk.

Q. And on this trip that you took on December 31, 1941, who all was in the caboose on that trip?

A. Well, there was myself and Fred Kinney.

Q. Who is Fred Kinney? Who is he?

A. He went along with me. Q. Ishe a T. P. & W. employee?

A. Yes.

Q. What is his work?

A. Same as myself.

Q. Fred Kinney, and who else?

A. There was Mr. Carnarius:

Q. Did he ride in the caboose all the way?

A. No, he rode in the caboose part of the way

Q. What portion of the way did he ride in the caboose? Tell what portion.

A. Sometimes when we stopped he would get out.

. O. Starting from East Peoria!

A. I couldn't remember the exact points.

Q. You can give us some idea.

A. He rode the caboose to Hollis,—Q. He rode the caboose to Hollis?

A. —and then he got on the head end.

Q. And there he got on the head end, is that right!
A. Yes.

377 Q. Did he come back and get in the caboose any other time until you got to Hamilton?

A. I believe at Canton he got in the caboose.

Q. At Canton he got back on the caboose?

A. Yes.

Q. Did you stop the train at Canton when he came back and got on the caboose?

A. No, the train wasn't stopped at Canton.

Q. He got off and flipped back on? Is that where he got in the caboose?

A. It was Canton or Cuba, I am not just sure.

Q. You are not just sure which it was?

A. No.

Q. How long did you stop at Hollis?

A. I don't remember.

Q. You don't remember? Would you say it was as much as five minutes?

A. I couldn't say.

Q. 'Well, it was long enough for Mr. Carnarius to walk from the caboose to the front of the train, is that right?

A. Yes.

Q. Is that right?

A. Yes

Q. And Carnarius, Kinney and yourself—A. There was Owen, the rear brakeman.

Q. Who?

A. Owen. That was his last name.

Q. And anybody else?

A. There was one special agent.

378 Q. What was his name?

A. I can't recall his name right now.

Q. Do you know where he came from?

A. No, I don't?

Q. He was armed, wasn't he?

Yes, he had a pistol.

Do you know what calibre? Q.

A.

Q. It was loaded, wasn't it?

I don't-know, I suppose it was. A.

Now, you don't know who any of the men were that you saw either on December 31 or January 1, do you?

No: I have no idea.

You couldn't recognize any of them, could you?

Mr. Knoblock: I think that is all.

379 BORIS J. GLAVASH, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name? Boris J. Glavash.

Mr. Knoblock: How do you spell the last name?

G-l-a-v-a-s-h.

What is your place of residence?

215 Kettelle Street, Peoria.

And your business or occupation ?

Maintenance clerk in the superintendent's office.

How old are you?

A: Twenty-three.

How long have you worked at the T. P. & W. !

About five years and eight months, I believe it is.

In what capacity or capacities?

As stenographer-clerk, and then about two years ago I was made mäintenance clerk.

Q. And on December 31, 1941, did you assist in the operation of any train or engine?

A. No, sir.

Were you on any train or engine?

A. Yes, sir.

What train or engine?

On a yard engine which-I got on the yard engine. at the east end of the Franklin Street bridge and rode down to the Union Depot.

Q. And do you remember the number of the engine? A. Well, it was a 70 engine, but I don't recall.

Q. Is that the type of engine, 70 engine?

A. Yes, sir, It's a class of engine.

- Q. What was that engine pulling? Was, it operating a train?
 - A. It was delivering some cars over to Peoria.

Q. That was a switching operation, was it?

A. Yes, sir.

Q. Where were the cars to be placed in Peoria !

A. I don't know for sure because I didn't have any access to the switch list that the conductor had—that the foreman had.

Q. Were they empties?

A. I don't know.

Q. How many cars?

- A. Well, I didn't count them, but I couldn't say for sure.
- . Q. How did you happen to get on the engine at that point?

A. Merely to ride back over to the Union Depot.

- Q. What did you observe when you arrived at the point where this engine was stopping on West Washington Street near the bridge?
- A. All that I saw, there was a crowd of people around there.

Q. Did you see them doing anything?

A. No, they were spectators, people that had gone along the highway, and were looking at the engine.

Q. Did you observe anything with reference to the

engine?

A. You mean damage to the engine?

Q. Yes.

A. Well, no. I believe there was some windows broken out, but that's as far as I saw.

Q. That's what I am asking you about.

3801 A. Yes, I saw the windows broken out of the en

Q. Did you see any former employees of the road there!

A. No, I got there after it happened.

Q. Who was the engineer?

A. What engine? Thielbert.

Mr. Knoblock: What is that?

Mr. Elliott: Fred Thielbert, T-h-i-e-l-b-e-r-t.

Q. Did you see the engineer?

A. Yes, sir.

Q. Where was be?

A. He was standing on the ground when I got there.

Q: Did you ride on this engine across the river?

A. Yes, sir.

Q. Did you observe anything after the engine started on its way across the river?

A. No, sir. What do you mean by "anything"?

Q. Anything happen out of the ordinary along there?

A. No. sir.

Q. Did you see any automobiles stopped at the crossing?

A. Well, just for the train as it was passing the cross-

ing.

Q. Anything happen on the way over?

A. No, sir.

Q. Who rode on the engine besides yourself?

A. Well, I don't know who was on the inside in the cab of the locomotive except Mr. Thielbert. I think he continued as an engineer, but I was riding on the front footboard by Herschel Thompson and Mr. McNear.

Q. Were also there?

A. On the footboard with me, yes.

381 Q. Where did you leave the engine after you got across the river?

A. I rode on down to a point about a block and a half below the Union Depot.

Q. Did you observe anything at the Union Depot?

A. No, sir.

Q. When the engine stopped at that point, you left it, did you?

A. Yes, sir.

Q. Is that where the cars were left?

A. Yes, they left the cars there.
Q. Is that the C. B. & Q. yards?

A. Well, I think that is where we leave the C. B. & Q. cars for delivery to them, although I am not sure about that particular spot for delivery.

Q. I will ask you if you recall being in the lane leading to the property of the plaintiff on January 1, 1942,

about 11:30 P. M.

A. Yes, sir.

Q. Who was with you?

A. Carroll Payne.

Q. Who is Carroll Payne?

A. He's the transportation clerk in the superintendent's office.

Q. · How were you traveling? ·

A. In my automobile.

Q. And were you driving!

A. Yes, sir.

Q. Were you on your way home?

A. Yes, sir.

Q. What happened?

As Well, nothing happened. We just drove up to the end of the lane, and there were a few men standing 382 in the lane, so I stopped and I rolled the window to talk with them, and they asked us a few questions, and we went on.

Q. What did they say to you?

A. Well, they looked in the back seat first to see if we had anybody in the car with us and we did not, and they warned Payne to stay off of the locomotives.

Q. What did they say to you?

A. They didn't say anything to me.

Q. What did they say when they warned him? How did they warn him? Can you tell us what they said, or the substance of it?

A. Well, they just told him to stay off a locomotive,

inasmuch as that was a place for a switchman.

Q. Who were these men you saw there at the time?

A. I recognized Clarence Gabbert and Delmar Newdigate.

Q. Anyone else?

A. There was another man whose face is familiar at the time. I didn't recall his name at the time. I understood later his name was McMullen.

Q. Walter McMullen?

A. Yes, sir.

Q. You recognized him as a former employee of the road, did you?

A. Yes, sir.

Q. About how many men were there altogether?

A. Well, I would say there were at least ten or twelve, and possibly a few more.

Q. Will you tell us just where they were when you

drove up to the end of the lane?

A. There were about five or six men standing blocking the roadway, and there were also a few men to the

383 left of the roadway, and they stopped us and we talked with them then.

Q. How did they stop you?

A. They didn't stop me. They just stood in the lane.

Q. You had to stop to keep from running over them?

A. I had to stop for the highway, and they asked us

a few questions.

Q. Did you observe whether or not they had anything in their hands? Any of them?

A. No, I didn't.

Q. Carroll Payne, I don't know whether I asked you what is his business with the railroad.

A. Transportation clerk. Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Glavash, on December 31, 1941, you were on the yard engine, and where did you get on the yard engine?

A. About a block and a half below the Union Depot.

Q. About a block and a half below the Union Depot?

And then you rode across to East Peoria, did you?

A. No, I rode from the East Peoria side of the river across the river, and down to a point about a block and a half below the Union Depot.

Q. I wanted to know when you first got on the train. You didn't get on a block and a half below the Union.

Depot, but you got on at East Peoria?

A. That's right.

Q. About what time of the morning was that?

384 A. It wasn't in the morning. It was in the afternoon.

Q. About what time was it?

A. About 3:15 or 3:30.

Q. Where did you get on it at the yard?

A. I didn't get on at the yard. I got on at the West Washington Street crossing in East Peoria.

'Q. Was that near the viaduct?

A. That's just east of the Franklin Street bridge.

Q. Just east of the Franklin Street bridge, and there was quite a crowd of people around there, wasn't there?

A. There were a few people, yes.

Q. What time of the afternoon was it?

A. It was about 3:15 or 3:30.

Q. And that is the time when there is a great number of people from "Caterpillar" coming out, and there is a crowd?

A. There were quite a few cars. I don't know whether

they were all "Caterpillar" employees.

Q. When you get on the train, who else was there? I

mean on the train.

A. Well, Thielbert, the engineer, and Mr. McNear and Herschel Thompson, the special agent.

Q. And yourself? A. And myself.

Q. And the three of you rode on the footboard across to Peoria?

A. Yes, sir.

Q. Now, there wasn't anyone there at all that you recognized as any of the employees of the T. P. & W.?

A. No, sir, I didn't see any of them.

Q. Now, on January 1, 1942, at 11:30 P. M., that 385 was at night, was it not?

A. Yes.

Q. And Carroll Payne was riding in your car, and you were leaving the yards over in East Peoria?

A. That's right.

Q. And when you got to the end of the lane, there is a hard road, isn't there?

A. That's right.

Q. There is a "Stop" sign there?

- A. I really wouldn't say if there is a "Stop" sign or not. I don't recall seeing it.
- Q. But it is your custom to stop there before entering onto the highway?

A. That's right.

Q. These men didn't order you to stop, or anything?

A. They were standing right out in the lane. I would have had to stop or run them down.

Q. As far as threatening you, they didn't threaten you in any way that night did they?

in any way that night, did they?

A. No, sir.

Q. They just simply said to Carroll Payne to stay off the locomotives inasmuch as that is a job for a switchman! That is the substance of the conversation with him, isn't that right?

A. That's right.

Q. That's about all that went on there, and you went

on the highway and went about your business, is that right?

A. That's right.

Mr. Knoblock: I think that is all.

The Court: Is that all with this witness?

386 CARROLL PAYNE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Carroll Payne.

Q. And how old are you?

A. I am twenty-nine.

Q. Where do you live?

A. Peoria. ·

Q. And your business?

A. Railroad clerk.

Q. How long have you been employed as a railroad clerk?

A. Eight and a half years.

Q. All the time with the T. P. & W.?

A. Yes, sir.

Q. And on December 30, 1941, were you near the entrance of the freight house?

A. Yes, sir.

Q. And will you tell us what occurred at that time?

A. I arrived at the entrance to the freight house about 7:55 A. M. At that time I saw a tractor of one of our L. C. L. (less than car load) freight units was also stopped at the entrance, and a couple of the men were talking to the driver of the truck.

Q. Did you hear what they said?

A. No, sir, I didn't.

Q. Do you know the name of the driver?

A. Adolph H. Rinck.

387 Mr. Knoblock: What is it?

A. A. H. Rinck.

Q. Were you stopped?

A. I was stopped, but not for—not because they didn't want to allow me to pass.

Q. Did you recognize some of the men that were there at the truck, the L. C. L. truck?

A. Yes, sir.

Q. Who were they?

- A. One man was Martin W. Totten, and the other was W. A. Evans.
- Q. And they were the ones that were engaged in talking with this truck driver?

A. Yes, sir.

Q. Were there any others present who were not taking part in this discussion with the truck driver?

A. Yes, sir, there were three others present.

Q. Name them, please.

A. One I can't name. The others were W. J. Christoff and Raymond Tinsman.

Q. T-i-n-s-m-a-n?

A. Yes, sir.

Q. And one you could not recognize or name? Did you recognize him in any other manner? Was he a former employee of the railroad?

A. Yes, he was an employee. I haven't seen him

enough to know his name.

Q. Do you know that he was a former employee?

A. Yes, sir.

Q. What did you see these men do with reference to the L. C. L. truck?

388 A. I merely saw them talking to the driver.

Q. What did the truck do?

A. It was stopped at the time, of course, and two or three minutes later it drove ahead to the freight house.

Mr. Knoblock: Two or three minutes later it did what!

A. Drove ahead to the freight house. Q. Which way was the truck going?

A. It was headed off the street, off West Washington Street toward the freight house.

Q. West Washington?

A. That is the entrance to the freight house. Q. There was that with reference to this lane?

A. That was at the entrance to the lane leading to the freight house.

Q. That's near the Altorfer plant?

A. Yes, sir.

Q. It's not the lane that leads from 24 down to the yards?

A. No. sir.

Q. How many pickets were there?

A. There were five at that time.

Q. Five?

A. Yes.

Q. All former employees of the railroad?

A. Yes.

Q. Did they have anything with them in their hands?

A. No, sir.

Q. Now, I want to refer to the entrance to the freight house on the same day about 2:40 P. M. Did you observe anything there?

A. I observed an automobile stopped by the pickets.

389 Q. Do you know the name of the company that owned the automobile?

A. The automobile was owned by A. Wickert of Wickert Bros. Transfer Company:

Q. And what happened there?

A. The driver stopped and-

Q. Did you hear what was said? A. I heard part of what was said.

Q. Tell what you heard.

A. The driver asked the pickets if it would be all right for him to go into the freight house for a defense shipment.

Q. I didn't hear what you said.

A. The driver asked the pickets if it was all right for him to go into the freight house for a defense shipment.

Q. What did the pickets say?

A. They said they were instructed not to let anybody pass.

Q. What did Wickert say, the driver of this car?

A. The driver said that was all he wanted to know, if they didn't want him to go through he wasn't going.

Q. Did he go through?

A. · No, sir.

Q. What did he do?

A. He turned around and left.

Q: Now, can you tell us the names of the persons that were there at that time and engaged in that transaction?

A. Raymond J. Tinsman.

Mr. Knoblock: What?

A. Raymond J. Tinsman. O. R. Nation.-

Mr. Knoblock: Nation?

A. Yes .- C. H. Dodson, W. L. Clark.

390 Mr. Knoblock: Clark?

A. Clark, W. L.

Q. Did you see William J. Turpin at any time?

A. I thought I had named him. He was one of them.

Q. At that point?

A. Yes.

Q. Were they or not former employees of the railroad!

A. Yes, sir.

Q. Now, were you at the freight house on the same day, 12/31/41, at 3:35 P. M.?

Mr. Knoblock: Wait a minute. 12/31/41?

A. That was the following day?

Mr. Heyl: Following day.

Mr. Knoblock: It is the same, as I have it.

A. I was in the freight house at that time.

Q. What did you observe that occurred at the entrance

to the freight house on that date?

A. I knew the driver of the maintenance truck was coming in. I merely observed that the pickets, two pickets, waved their arms at him as he went by.

Q. Did they say anything to him?

A. I don't know. I was too far away.

Q. What was the name of the driver?

. The driver was Rinck again.

Q. _ R-i-n-c-k-e?

A. R-i-n-c-k.

Mr. Knoblock: R-i-n-c-k-é?

A. R-i-n-c-k.

Q. The names of the pickets?

391 A. Charles T. Waller and Herbert Siebenthal.

Q. Did the truck stop?

A. No, sir.

Q. That was the L. C. L. truck?

A. Yes.

Q. That was one of the railroad's trucks?

A. Yes.

Q. What does L. C. L. stand for?

A. Less than car load.

Q. What is the truck used for?

A. Used for transportation of less than car load shipments between certain points on the eastern division.

Q. In other words, this truck is used to haul freight, is it not?

A. Yes, sir.

Q. Now, were you on or near an engine of the plaintiff on December 31, 1941, at 3:15 P. M.?

A. No, I wasn't near the engine at that time.

Q. Where were you?

1. I was at the Union Station in Peoria.

Q. How did you happen to be at that point?

A. That's where my office is.

Q. Did you know about the movement of this engine and train?

A. I didn't know about it prior to the time I noticed it across the river.

Q. Just tell what you'saw with reference to that train,

A. I saw that the train was stopped.

Q. Where?

A. At the east side of the Illinois River bridge.

Q. What did you observe with reference to the stop-392 ping of the train?

A. I merely observed it was stopped, that's all.

Q. Then what? Did you notice anything further about it?

A. I went across the river to find out why it was stopped. I noticed there had been damage to the engine, breaking out of the headlight and various windows, and that the crew was not at the engine at that particular time.

Q. Did you see the crew later?

A. Yes, sir.

Q. Where were they?

A. They were scattered at various points away from the engine.

Q. Did you notice any of the striking employees there?

A. After I arrived there I noticed, immediately after I arrived—I saw George C. Kneisley and Frank Lucas.

Q. Did you see any of the others!

A. I later saw H. O. Todd, Hustler Wilson and Jack Totten, Leo Totten.

Q. Leo Totten?

A. Yes.

Q. How about J. L. Knight?

A. I saw him later than that.

Q. At that same point?

Yes, after the engine started again.

Q. What did you observe these men do as the engine started?

A: As the engine started, the only one, that is, at the

time the engine was starting, the only one I saw then was Mr. Mack.

What did he do?

He drove by in an automobile, and turned back toward the engine and gave a scab sign.

A. I couldn't say to whom it was directed.

Was there anyone in the car with him?

I noticed one other person, a lady in the back seat, A.

Q. What did she have in her hand?

Ă. I didn't observe what she had in her hand.

Q. Do you know who that lady was? No. sir. I didn't recognize her.

Q. Was there anything more about that train that you observed? Well, what was the extent of the damage to the locomotive?

The damage, as I could see it, was just to the head-

light and the windows in the cab being broken.

Now, are you familiar with the number of cars that were attached to engine 70?

At that time, yes.

I want to ask you further: Did you observe anything with reference to the engineer at the time you went over there? Fred Thielbert?

A. I noticed that one of his ears (I believe it was his left) was chafed and red as though it had been struck by an object.

What about the fireman? Did you make any ob-

servation of the fireman?

A. At the right side of his face it appeared be had been struck by some object.

Q. Near what part of his face?

A. Near his right eye.

Now, how many cars were there coupled to that engine at the time?

There were five.

Q. Do you know what these cars contained, and

394 where they were destined?

The first three cars behind the engine contained bottles, empty bottles, which, according to the eard that had been tacked to the side of the car, had moved from Muncie, Indiana, from Ball Brothers.

Q. Ball Bros. Manufacturers?

A. Ball Bros. is all I know.

Q. Consigned to what point?

A. The car didn't show the consignee, but I later saw the way bills. They were consigned to Hiram Walker in Peoria.

Q. The three cars?

A. Yes.

Q. The next two cars, what were they?

A. The fourth car was an empty refrigerator car, and the fifth car was an empty Chesapeake & Ohio car.

Q. Where were those cars shipped from?

A. I don't recall.

Q. Now, what was done with the five cars after you arrived?

A. Those five cars were shortly afterwards delivered to the Rock Island Railway in Peoria.

Q. Did you see that done?

A. Yes, sir.

Q. Were you present when they were delivered?

A. I was in the station at the time. I saw where they were delivered.

Q. They were delivered at the regular place for the Rock Island, were they?

A. At a point where they were often delivered for the Rock Island.

Q. Now, did you see the movement of the follow-395 ing men that you have mentioned at the point where

this engine 70 was located when you arrived there, or any time later? Did you see where they went, and how they left the place? Kneisley, Lucas, Wilson, Totten and Todd?

A. I didn't see how Kneisley and Lucas left, nor when they left, but I noticed that Todd and Wilson got in an automobile driven by L. C. Totten, Leo Totten.

Q. Which direction did they go?

A. They drove away from Peoria toward the east.

Q. Do you know whether these cars you have mentioned, the three of them containing glass bottles from Muncie, Indiana, were picked up by the Rock Island, or did they remain there?

A. I don't know of my own personal knowledge.

Q. The Rock Island would be the one that would take them?

A. Yes, sir.

Q. Now, do you recall an incident that occurred at the

entrance to the lane leading to the yard from Route 24 on January 1, '42, at about 11:30 P. M.?

A. Yes, sir.

Q. And what occurred at that time?

A. I was leaving the yard in an automobile driven by Boris Glavash, and were stopped at the point where the lane joins Route 24.

Q. By whom?

A. I am not sure that I recall who stopped us or who stood in our way, but one or two fellows did, and we opened the windows and talked to the men.

Q. What did they say to you?

A. One of them said he had heard I had stepped on the footboard of the yard engine, and he told me that the 396 engines belonged to the firemen and engineers and hostlers, and said that he didn't want any trouble caused by any misunderstanding by those who might get on the engines.

Q. Who was that speaking to you?

A. That was C. S. Gabbert.

Q. Who else was present at that time?

A. Standing by Gabbert were Walter McMullen and Delmar Newdigate.

Q. Defendants in this case? Are they defendants in this case?

A. They are members of the Brotherhood, yes.

Q. You don't know whether they are defendants or not?

A. 'I can't say.

. Q. Are they in the court room?

A. I see McMullen, yes, and Newdigate.

Q. Were there any other men there at that time?

A. I saw, oh, about fifteen men altogether. Among them was Leo Totten and C. W. Blackburn and John Gimmings.

Q. Did you recognize the other men by name or other-

wise?

A. I had no opportunity to see all of them, but those that I saw, that is, whose faces I saw, I thought I recognized.

Q. Former employees of the road?

A. Yes, sir,

Q. Is that true of all that you saw?

A. Yes, sir.

Q. Did you observe these men having anything in their hands?

A. I don't recall that they did at that time.
Q. Did you observe them at any other time, in going back and forth through there, having anything in their hands !-

Not at the entrance to the lane.

Or at the freight house?

A. At the freight house I saw on the 30th.

Q. That is December 30?

December 30, late in the morning, late in the A. M., that one or two, at least one, of the pickets had a large club in his hand, but he didn't have it very long.

You saw him with it?

I saw him, yes, sir. Where was he with reference to the freight house?

A. At the entrance to the freight house. Q. What did you see him doing with it?

A. He held it was all.

Do you remember who that was? I don't remember who held it, no.

One of the men that you have named here?

Mr. Knoblock: I object to that.

The Court: Objection sustained. He said he didn't.

Q. Was there any fire there at that time around where he was?

A. Yes, sir.

The fellow that had this club?

A. Yes. sir.

How many men were there at the time?

A. There were at least eight at that time.

Did you observe anything more, in going through the lane at various times, with reference to the acts of these men that you saw in the lane?

A. Nothing other than just conversing with them in the

usual manner.

Mr. Heyl: All right! That's all.

398 ·Cross-Examination by .Mr: Knoblock.

Q. Mr. Payne, on December 30, 1941, when you mentioned the entrance to the freight house at 7:55 A. M. you saw a L. C. L. tractor stopped there at the entrance. You didn't hear any of the conversation, did you?

A. No. sir. I didn't.

Q. You didn't hear any threats made, or anything of that character or kind?

A: No. sir. ..

Q. And you didn't see—not only didn't hear, but didn't see—any threats made at that time, did you?

A. No, sir.

Q. All you know about that incident is that you saw Martin W. Totten and W. A. Evans conversing with this man?

A. Yes.

Q. And the truck went on its way, and it went through the line, didn't it?

A. Yes, sir.

Q. Now, about 2:40 P. M. at the freight house the truck or auto was stopped belonging to the Wickert Transfer Company?

A. It was an automobile.

Q. And the driver simply said to them could be go on through to get this shipment, and they said they had been instructed not to let anybody through, and he said, "That is all I want to know", and he went back!

A. Yes, sir.

Q. There was no threats made at that time?

A. No, sir.

Q. No force or threats of any character?

399 A. No, sir.

Q. Oh, yes! On December 30, '41, at about 3:35 P. M. when you were at the freight house, you saw a truck driver—you saw a truck go by driven by a man by the name of Rinck. They just simply waved their hands at him, is that all?

A. Yes.

Q. There was no threats or force used or made of any kind or character?

A. No, sir, they didn't talk with him.

Q. And on December 31, 1941, when you went across the river at about 3:15 P. M., when you got over there you saw no one creating any disturbance of any kind or character, did you?

A. No, sir.

Q. And after you got over there, you just saw Kneisley there and Lucas and Wilson and Totten and Todd, and then later a man by the name of Mack, and they weren't in any way, manner or form threatening anyone or showing any signs of force?

A. Mack just gave him that sign.

Q. He gave him that sign? That is the only eventful thing you saw happen over there?

A. Yes, sir.

Q. And the men later went to their automobiles, and continued their way?

A. Yes, sir.

Q. On this occasion on January 1, 1942, at 11 P. M., 11:30 P. M., you were leaving in a car driven by Boris Glavash?

A. Yes, sir.

Q. And at the end of the lane there where you.

A. Yes, sir.

Q. It's necessary for you to stop there in order to obey the traffic rules before entering the highway, isn't it?

A. Yes, sir.

Q. While you were stopped there, you did converse with Gabbert; and he didn't in any way threaten you or show any force at all? He just told you he didn't want any misunderstanding, isn't that right?

A. He told me he didn't want any misunderstanding. Am I allowed to give my impression of an inference?

Q. No, tell what he said.

Mr. Heyl: Tell what he said.

A. He said these engines were for the engineers, firemen and hostlers, and that he had heard that I was on the footboard of one of those engines, and he didn't want any harm created by any misunderstanding.

Q. That was all that was said, is that right?

A. Yes, sir.

Q. They at no time had any clubs there in their possession, nor at any time did they threaten you with any clubs or anything of that kind?

A. I was not personally threatened with any club.

Q. They let you go in and out of there any time you wanted to, isn't that right?

A. Yes, sir.

Q. You know, also, Mr. Payne, that on about the 31st of December, 1941, and the day after the incidents you have recounted here on the 30th, the picket lines were taken off the freight house?

401 · A. I didn't observe that myself.

. That knowledge came to you later?

. Came to me by telephone, yes.

Q. And you say on December 30, 1941, when you saw this one picket have the large club, you said he, as I understand you, didn't have it very long?

A. No, I saw him again a short time later, and he didn't

have it.

Q. And the men did have a fire there in order to keep themselves warm, isn't that right?

A. Yes, sir.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. What kind of a club was that you saw him have? Just describe it.

A. Beg pardon?

Q. Describe it, will you, please?

A. It was a tapered club, large at one end and knotted, and small at the other end.

Q. How long was it?

A. Two or two and a half feet long.

Q. How was he carrying it when you saw him?

A. He had hold of the small end, and the large end in the other.

Q. What position was it in?

A. As though—I don't know whether you might understand it.

Q. Did he have it pointing down or up? Can't you tell us?

A. He had it in front of his torso,

Q. Was he standing up or sitting down?

402 A: Standing.

Q. On the picket line?

A. Yes.

Q. Where, with reference to the driveway or the entrance?

A. He was standing at the edge of the driveway.

Q. Near the entrance to the freight house?

A. At the entrance to the freight house.

Mr. Heyl: That's all.

Recross Examination by Mr. Knoblock.

Q. You never saw him threaten anybody with that club, did you?

A. No. sir.

Mr. Knoblock: That's all.

The Court: We will be in recess at this time, gentlemen, for a few moments.

(Recess.)

403 FRED THIELBERT, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Fred Thielbert.

Mr. Knoblock: I didn't get it.

A. Thielbert.

Q. Where do you live?

A. I am staying over at East Peoria. Q. What is your place of residence?

A. Staying at the-100 Fulton Street, Peoria, Illinois.

Q. What is your business or occupation?

A. Engineer right now.

Q. And you were an engineer on yard engine 70 on December 31, 1941?

A. Yes, sir.

Mr. Knoblock: December 31? Mr. Heyl: December 31, 1941.

Q. Where were you proceeding with that engine?

A. Over to the P. & P. U. "hump" yards.

Q. Did anything occur before you reached the "hump" yard?

A. Yes, sir.

Q. What occurred?

A. When we went through the viaduct, they started throwing rocks at us, but they didn't seem to hurt anything going through the viaduct. We proceeded and went on over to the P. & P. U. yards, made our delivery there and came back, and picked up for Peoria.

404 Q. Where did you pick up for Peoria?

A. We left them on the main line there.

Q. Did anything happen before you reached Peoria?

A. Yes; when we passed the spillway bridge.

Q. Where is that?

A. The spillway drive bridge or Dry Run bridge, whatever they call it. I am not very well acquainted there.

Q. Just before you reach the east end of the Peorla

river bridge? Illinois River bridge?

A. No, there is a little culvert bridge there.

Q. Near the Caterpillar Trail, is it!

A. Yes.

Mr. Knocklock: This is in East Peoria?

Mr. Heyl: In East Peoria.

Q: What happened there?

A. I saw some men there, and when the engine started passing they started throwing rocks again, and broke out the window on my side.

Q. That is the right side?

A. The right side.

Q. Did anything happen later on before you reached Peoria?

A. After I got by, I saw them getting in cars, and when we got to the board we got the derail and had to slow down.

Mr. Knoblock: I don't know where he means.

Q. Is that the board-

A. I think they call it Washington and Franklin Street, just before you cross there.

Q. At the Rock Island crossing, isn't it, before you cross the bridge?

405 A. Before you cross the bridge.

Q. Is it the board for the bridge?

A. Yes, you get it to go across the bridge.

Q. What occurred there?

A. I slowed down for the board, and while I slowed down someone opened up the rear end angle cock of the car, and stalled my engine.

Q. What else happened?

A. Then they started in stoning, throwing stones, so bad that no one could stay on the engine.

Mr. Knoblock: I object to that.

The Court: Yes, state what happened.

A. All right.

Q. Were you able, because of these rocks coming in the engine, to remain there?

A. No, that was so bad, coming in so bad.

Q. Were you hit?

A. I was hit in the back once, but it didn't hurt me any.

Q. What was it you were hit with?

A. I couldn't say whether it was a rock, or whether it was a brick bat. They was throwing both.

Q. Who was your fireman?

A. The fireman was Wilson Hardy.

. And did he leave the engine?

A. Yes, he did.

Mr. Knoblock: Did you say "Wilson Hardy"?

Mr. Elliott: Hardy.

Q. Did anyone leave the engine when you did?

A. They was all gone before I left.

406 Q. And what happened after you left the engine? Where did you go? What did you do?

A. I started going up the tracks, and some of them started after me, and one of them did get me, and there was four more come and got me.

Q. What did they do with you?

A. One grabbed me around the throat, and one of them hit me in the ear and told me not to get back on the engine.

Q. What else did they say to you?

A. They knocked a pal of mine out over there, and one of them said he didn't think he would get back on the engine, that I would be all right. Another one said he didn't believe it, and they ought to carry me over and knock me out beside him.

Q. Did they say where your pal-had been knocked out?

A. He was over across the street.

Q. Do you know these men who made the statements to you?

A. I would know the man that hit me if I would see him.

Q. Do you see him in the court room?

A. Yes.

Q. Will you walk down there, and point him out?

1. Yes, sir (complying).

Mr. Heyl: Will you stand up, please, so we can see who you are pointing to? What is your name?

Mr. Gimming: John J. Gimming.

Q. Now, how many men were with this man, John J. Gimming, whom you have just identified in the body of the court room?

A. I couldn't just exactly say; four or five men.

Q. And do you recognize the faces of some of these in the court room?

407 A. He is the only one I would recognize.

Q. Is he the one that made those statements to you?

A. No, there was another little fellow that made the

statement to me.

Q. Who was it that socked you?

A. I couldn't say that because they was behind me and beside me, and I couldn't see.

Q. What other blows did you receive at that time?

A. That was all.

Q. What did they do after they made these statements to you, and told you they had knocked your pal out?

A. They left.

Q. What did you do?

A. I went across the street to see if I could find the fireman.

Q. What?

A. I went across the street to find another fireman. I had a student fireman on there. His name was DuBois.

Q. When they made this assault upon you you have just described, and made these statements, where were they?

A. They was on company property.

Q. And were these men you have just described the men that were throwing stones at you?

A. Where were they first?

Q. I say were these men that had been throwing stones

at you and your engine?

A. No, I couldn't say that, whether they throwed the stones, because you couldn't look out the window, they was coming too fast.

Q. While you were driving the engine?

408 A. Yes.

Q. What did you hear them saying about stones, if anything?

A. I heard them holler and said they was all even with the other side, that they had better get around and get them.

Q. Can't you speak up?

A. They was all on the right hand side of the engine throwing stones, and they happened to see some of them dodged in the cab, and they feared they were getting off on the left hand side, and I heard someone say, "They are getting off on the left hand side. Let's go over and get them."

Q. Did all the men in charge of this train leave the train when you did?

A. Yes, sir.

Q. Was there anyone left in the cab of the locomotive?

A. No, sir.

Q. You stated that after they had assaulted you, they left you. What did you do?

A. I went across the street to find the men that they

should have knocked out.

Q. That they said they knocked out, is that what you mean?

A. Yes.

Q. Then what did you do? A. I found him over there.

Q. Where was he?

- A. Another man was carrying him on up toward the filling station there.
 - Q. Do you know the man that was carrying him?

A. No, I don't.

409 · Q. What did you do after that?

A. After I stood there a little while, I went on back ever to the engine.

Q. Then what?

A. Got up in the engine and got some water in her, and got ready to make delivery to go across the river to Peoria.

Q. Was Mr. McNear, the president of the railroad, in this?

A. He was riding the footboard across the bridge.

Q. You delivered those cars that were hooked to that engine when you left it?

A. Yes.

Q. And you delivered those cars in Peoria, did you?

A. Yes, sir.

Q. Who was the man that you say was knocked out?

A. DuBois.

•Q. He was on the engine as one of your helpers?

A. Yes.

Q. Or students?.

A. Yes, sir.

Q. How far did you find him from the train when you did find him?

A. I judge it would be two hundred feet, maybe a little bit more.

Q. Do you know the name of the man that was carrying him to some point?

A. No, I don't.

Q. Did you see DaBois again that day?

A. Yes, he went on the engine with me.

Later on?

A. Later on him and the engine foreman and a brakeman-switchman-

Q. Now, did you observe the men that got into the 410 cars where you were stoned first on that trip?

A: How's that?

Mr. Heyl: Read it to him. (Question read by reporter.)

A. I seen them get into the cars.

Q. Did you recognize any of the men?

A. No, but I saw the cars stop up at the other end.

Q. Were they the same cars that had stopped?

A. Yes, the same cars.

Q. Did you see this man, John J. Gimming, that you identified in the court room as being one of the occupants of one of these cars?

A. No, I couldn't say that.

Q. Were there any women in any of these cars?

A. No.

Mr. Heyl: I think that's all. You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Thielbert, where did you say you were living now?

A. I am staying down here at the yards right now.

Q. At the T. P. & W. yards in East Peoria?

A. Yes, sir.

Q. You don't have any room or residence other than that, is that right?

A. No, not at the present time.

Q. Didn't I hear you say you were staying at 100 Fulton Street here in Peoria?

A. Yes, I did.

A.

Q. Are you staying there?

411 A. No, not no more.

Q. When did you stay there?

I stayed there about four weeks.

Q. Four weeks, and when was that time?

A. Before I went over here.

Q. And where did you live prior to that?

A. I lived at 407 West Main, New London, Iowa.

- Q. At New London, Iowa?
- A. Yes.
- Q. What railroads did you work for before you went to work for the T. P. & W.?
 - A. C. B. & Q.
 - Q. How long did you work for them?
 - A. Fourteen years.
 - Q. When did you leave their employ?
 - A. 1930.
 - Q. And have you railroaded any since 1930?
 - A. No, sir.
- Q. And what was the type of work that you did when you were with the C. B. & Q.?
 - A. Fired.
- Q. Is this the first time you ever ran a train as an engineer?
 - A. Yes.
- Q. Are you one of the men that have been offered this \$10.00 a day bonus during this situation?
 - A. They said we would get a day's wages and \$10.00.
 - Q. And \$10.00 more? Who told you that?
 - A. The superintendent
- Q. Mr. Best? On December 31, 1941, what time did 412 you report for work that day?
 - A. 6 o'clock.
 - Q. In the morning?
 - A. In the morning.
- Q. And, now, you say you were going to the P. & P. U. "hump" yards. What time of day were you going over there?
 - A. Well, it was about 2 o'clock.
 - Q. 2 o'clock in the afternoon?
- A. Yes. About 2 o'clock when we got over there at the P. & P. U. yards.
- Q. And what time was it when you went past the viaduct?
- A. Well, it must have been around twenty minutes to 2, something like that.
 - Q. Twenty minutes to 2 in the afternoon?
 - A. Yes.
- Q. Who was in the cab of the engine with you at that time?
 - A. Well, there was John Heilman.
 - Q. John Heilman, is that right?
 - A. Heilman.

Q. Who else!

A. And Wilson Hardy.

- Q. And what was John Heilman's work that day in there?
 - A. He was engine foreman.

Q. Engine foreman?

A. Yes.

Q. And who else besides Heilman and Hardy?

A. DuBois.

- Q. And he was the student fireman, is that right?

 A. He was the student fireman.
- 413 Q. And Hardy was the fireman?

Q. Where does Hardy come from?

A. Well, I couldn't say. I think he lives in East Peoria.

Q: DuBois, he was the one that was your pal, is that right?

A. He was the one that was hit.

Q. Wi ere did he come from?

A. I couldn't say. They are all strangers to me.

Q. What was the reason for your coming from New London, Iowa, to Peoria about a month ago?

Mr. Heyl: We object to that as immaterial.

The Court: I think he may answer.

He came here to take employment, is that correct?

A. How's that?

The Court: Is that the reason you came here, to accept employment?

A. Yes, sir.

Q. From whom?

A. From anyone I could get employment from. Q. I see. Had anyone suggested to you that if you

Q. I see. Had anyone suggested to you that if you came over here you might be able to get on the T. P. & W.

A. No, sir.

Q. They did not? Now, at the viaduct you do not know who threw the rocks?

A. No, sir.

Q. You didn't see anybody throw any rocks, in fact, did you?

A. Yes, sir.

Q. But you couldn't recognize them?
A. No. sir.

414 Q. But you couldn't recognize them now as any employee or employees of the T. P. & W.?

A. No, sir, I couldn't.

Q. And that same thing is true at the spillway bridge near the Caterpillar Trail in East Peoria, is that right?

A. Yes, sir.

Q. You didn't recognize anybody who was there?

A. No, sir.

Q. Now, at the Washington and Franklin Street crossing in East Peoria, you say your rear end angle cock was opened on the engine, is that right?

A. Yes, sir.

- Q. Where is that situated?
- A. On the rear end of the box car.

Q. Rear end of what?

A. Rear end of our box car.

Q. How much in cars did you have on there at that time?

A. Four.

Q. You don't know who did that, do you?

A. No.

Q. Was any member of your crew back there at that time?

A. No, sir.

Q. They were all up in the engine?

A. Yes, sir/

Q. Besides yourself, Heilman, Hardy and DuBois, was anybody else in your engine?

A. There was two brothers switchmen.

Q. Two brothers who were switchmen, is that right?
A. Yes.

415 Q. Could that be Widmer?

A. Widmer, that's it.

Q. And they are from Washington, Illinois, is that right?

A. Yes.

Q: Well, who else?

A. There was a railroad detective.

Q. What was his name?

A. I couldn't say what his name is.

Q. Did he carry a gun?
A. I couldn't say that.

Q. But was he a special detective?

A. He's supposed to be.

Q. Now, who else?

A. That was all.

Q. Why did you leave the C, B, & Q:'s employment in 1930, Mr. Thielbert?

Mr. Heyl: We object to that as immaterial.

The Court: No, he may answer.

A. Well, I didn't go back to work.

Q. Was there a strike there?

A. No.

Q. You say you didn't go back to work. Why didn't you go back to work?

A. I went back to my trade cutting monuments.

Q. You had worked at the C. B. & Q. fourteen years, you say, but your real trade was cutting monuments?

A. Cutting monuments.

Q. How long had you been cutting monuments?
A. Eleven years one place.

Q. Where was that?

A. Burlington, Iowa.

Q. What years were they?

A. Well, 1918, when I went to work on the "Q.", and it was before that.

Q. You worked at the "Q." from 1918 to 1930, is that

right?

A. Correct.

Q. This monument company in Burlington, Iowa, what was the name of it?

A. Burris.

Q. Burris Monument Company?

A. Yes.

Q. Then on the Washington and Franklin Street crossing in East Peoria you say you slowed down to get the board, is that right?

A. Yes, sir.

Q. And they started to throw rocks there, as I understand it: Is that right?

A. Yes, sir.

Q. What time was that? What time of day?

A. Franklin Street?

Q. Yes.

A. Franklin and Washington?

Q. Yes.

A. I imagine that's about 3:35.

Q. That was about 3:35 in the afternoon, is that right? And when they started to throw, which side of the engine did-you get out of?

A. I got out on the left side.

417 Q. On the left side? Where were these men standing with reference to the engine when they were throwing stones?

A. First they were on the right side.

Q. And you got out the left side?

A. Yes, sir.

Q. Then you started away from the engine in what direction?

A. East.

Q. And how far did you go before Mr. Gimming, as you say, caught you?

A. I didn't get very far.

- Q. Well, about how far?

 A. Oh, I imagine twenty-five feet maybe, or thirty.
- Q. There was a conversation that you testified to there about them telling you not to get back on the engine?

A. Yes, sir.

Q. That took place there? You don't know who said that, do you?

A. No, I couldn't recognize him.

Q. I see. What else was said there?

A. That would be all. They said-

Q. They said something about getting out the left side?

A. What's that.

Q. Didn't you say someone said they were getting out the left side?

A. That is before I got out.

Q. That is before you got out?
A. That is before I got out of the engine.

Q. Now, other than John J. Gimming, you are not able to recognize anyone there at that time?

A. No, sir.

Q. And after this was over, why, you went back 418 to the cab and proceeded to run the engine?

A. I went over and got my pal first. Your pal, the boy?

A. The boy.

Q. And took him with you?

A. I took him over to the engine.

Q. And he got on the engine the same time you did?

A. Yes.

- Q. He didn't get on later? You got on about the same time?
 - A. About the same.

Q. Then you proceeded to run the engine over the bridge toward Peoria?

A. Yes, sir.

Q. When you got to DuBois, he was not knocked out then?

A. " was coming to.

Q. was able to talk to you?

A. was still a little stunned.

Q. out he was talking to you?

A. Yes, sir.

Q. Do you know where the boy lives?

A. No.

Q. Do you know where he comes from?

A. No.

Mr. Heyl: I object; immaterial, not cross-examination. Mr. Knoblock: Maybe I did go over that. If I did, I'

apologize to the court.

The Court: He said he didn't know anything about it.

Q. Do you know where Heilman went to?

419 A. No, sir.

Q. And Heilman come and got back on the engine with you?

A. Yes, sir.

Q. Did Hardy get back on the engine?

A. No, sir.

Q. Did this special detective—did he get back on the engine?

A. Yes, sir.

Q. Did the two Widmer brothers get back on there?

A. No.

Q. When you left the engine, did the special detective leave the cab of the engine, too?

A. When I left the engine?

Q. Yes.

A. He was off before I was.

Q. He got off before you did?

A. Yes, sir.

Q. You don't know where, he went?

A. No, sir.

Q. Do you know what he did?

A. I heard later he was calling for help.

Q. As a result of this, you never swore out any warrants?

A. What's that?

Q. As a result of this attack you have testified to, you didn't swear out any warrants?

A. No, sir, not at that time.

Q. And you at no time have in any way or form brought this to the attention of the public authorities or public officials, have you?

A. No, sir.

420 Q. You have never gone to them in any manner or form and asked for protection, have you?

A. No, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness? Mr. Heyl: That's all.

DON DuBOIS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Don DuBois.

Q. How old are you?

A. Twenty-one,

Q. Where do you live? A. 3328 North Madison.

Q. How long have you lived in Peoria?

A. About two months.

Q. What is your business or occupation?

A. Fireman on the railroad; on the T. P. & W.

Q. Can you speak a little louder?

A. Fireman on the T. P. & W.

Q. On December 31, 1941, were you a fireman on any engine of the road?

A. I was on switch engine number 79.

Q. Who was your engineer?

21 A. Fred Thielbert.

Q. Is that the gentleman who just testified?

A. I believe so.

Q. Now, will you tell the court what happened after you

left the yards on that day?

A. Well, as we were leaving the yards, at the end of the wards under the viaduct we received a few stones against the side of the engine and against the top of it, and we continued on down the track to the spillway bridge.

Q. At the viaduct did you observe where the stones

A. Well, I saw several fellows with stones along the side of the track, and I heard one hit the cab and I ducked behind the blinds on the side.

Q. Where were these men that had stones or rocks in their hands? Stones or bricks in their hands?

A. They were alongside the right-of-way there.

·Q. . Where, with reference to the picket line?

A. In front of the picket line.

Q. When you got to the spillway bridge, what happened?
A. We received another hail of stones and rocks and

brickbats which broke out all the glass on the north side of the cab.

Q. Is that the engineer's side?

A. That's right:

Q. You were traveling west, were you?

A. That's right.

Q. As you approached the Illinois River bridge, what

happened?

A. We were approaching the bridge going slow and waiting for the board, and when the engineer whistled for the board someone pulled the angle cock and shut off his air.

422 Q. Did you observe who did that?

A. No, sir.

'Q. Did you observe anybody about the rear of the train at that time?

A. No, I didn't?

Q. What happened after that?

A. We saw three or four cars sitting out there, and a bunch of fellows standing out there ready to throw stones and rocks and things, and they started to coming into the engine so fast I got behind one of the blinds, and one of the fellows got off the engine, and the rest of them started getting off, and I decided to get off and see where they were going. I didn't think it was safe to stay because the stones were coming in so fast. I climbed down off the engine and saw several of the fellows getting in the cars, and I thought I would, too, to be out of danger of the stones, and the driver of the autoniobile jumped out, and I decided I had better get out, too, and there was a gasoline truck, Standard Oil truck, and I started across the road and four fellows started up. They caught up with me in front of one of the filling stations across the road there and

started hitting me, and one of them I was was carrying one of these gas hose nozzles, and I believe one of them hit me with that. I saw him swing it.

Mr. Knoblock: I can't hear it.

A. After I saw these fellows slugging me, and I was trying to keep them from hitting me as best I could—and I was hit with something and knocked out. I guess they left me laying in the snow, and when I came to, or partly so, some fellow was trying to pick me up, and that gas hose. nozzle was still lying there.

423 Q. Describe that gas hose nozzle.

A. Well, it's the end of the nozzle that comes on the end of the gas hose that has the lever for shutting off the flow of gas.

Q. How long was that?.

A. I imagine it was about eighteen inches long.

Q. Did you see the man that was drawing back with that in his hand to hit you?

A. A did.

Q. Can you identify him?

A. I can.

Q. Do you know his name?

A. No. I don't.

Q. Is he in the court room?

Al I believe so.

Q. Will you go down and pick him out?

A. (Witness complies.) It's the second fellow from the end in the fourth row.

Mr. Heyl: Will you stand up, please?

What is your name?

Mr. Brown: William L. Brown.

Q. Is that the man?

A. Yes.

Q. After you saw this man that you have identified as William L. Brown with this gas hose nozzle'in his hand, drawing back, do you remember anything after that?

A. No, I don't.

Q. When you came to, where were you with reference to this train?

A. I was across the road from the train.

Q. Were these men there?

424 A. No, they were gone.

Q. Did you observe, or do you know, the other men that were with this William L. Brown?

A. No, I don't believe I could identify them.

Q. Did they say anything to you while they were making

this assault upon you?

A. They kept telling me to quit, to get off the railroad, that they were going to beat us all up for staying there.

Q. When were they aking these remarks to you?

A. When they were trying to hit me.

Q. Now, was there anything else that they said to you?

A. Well, not that I recall offhand.

Q. Where did they strike you? Where did this man Brown strike you with this gasoline nozzle?

A. At the temple at the side of the head here (indi-

cating).

Q. You are pointing to the right side of your head? Right temple?

A. Yes, sir.

Q. Did anyone else in that crowd strike you?

A. They all hit me with their fists.

Q. How many were beating you up?

A. There were four of them, that's all I could say. I

don't believe there were any more.

Q. Did you make an effort to get away from them after you left your engine?

A. I did.

Q. How did you travel? Run or walk?

A. I was running.

Q. Do you remember how many were around there?

425 A. Well, as near as I could count there must have been in the neighborhood—There was at least twenty men there. I never tried to count them.

Q. What were they doing? What did you observe that

they were doing?.

A. Before I got out of the engine, they were all throwing rocks, but after I got out of the engine they were chasing us fellows.

© Q. Did you observe that they chased anyone besides

yourself?

A. I didn't see them because I was in too much of a hurry.

Q. You had all you could do to take care of yourself, is that it?

A. That's right.

Q. Later did you return to the engine?

A. I did.

Q. And during this period of time, and before you

started the engine to go across the Illinois River bridge, did you observe any automobiles near this train?

A. Well, there was a great number of automobiles

around there.

Q. Did you notice any of these men that were chasing you or beating you getting in or out of an automobile?

A. No, I didn't. I probably wouldn't have known them

if I had.

Q. You later returned to the engine and traveled across the river with the train, did you?

A. That's right.

Q. What did you do after that?

A. We left the cut of cars we had in the yards over there, and returned to the round house.

Q. . What did you do, if anything, after that?

A. I believe I went over to see how badly I was damaged.

Q. You mean personal injuries? Is that what you mean?

426 A. Yes.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. DuBois, you have been living here at 3328 North Madison about two months, you say?

A. No, not at that address two months.

Q. How long have you lived at that address?

A. About a month.

Q. You have lived here in Peoria two months?

A. Approximately two or three months.

Q. Where did you live before you lived here in Peoria?

A. Bloomington.

Q. What was your address at Bloomington, Illinois?

A. 201 North Mason.

Q. Mason Street?

A. That's right.

Q. What was your work in Bloomington?

A. I was selling vacuum cleaners for the Hoover Company.

Q. And what type of work? When did you first go to work for the T. P. & W.?

A. December 29.

Q. 1941?

A. That's right.

Q. What were you doing here in Peoria prior to going to work for the T. P. & W.?

A. Working for the Hoover Company.

Mr. Heyl: Louder, please.

427 A. I was working for the Hoover Company.

Q. Are you one of the men that was promised \$10.00 extra bonus during this situation besides your regular rate of pay?

A. I was told I would receive a \$10.00 bonus.

Q. Who told you that?

A. I believe one of the men did. I am not positive just who.

Mr. Heyl: I move to strike it as not binding.

The Court: I think it may stand.

Q. Was December 29 the first day you went to work for the T. P. & W.?

A. That's right.

Q. What did you do that night?

A. That day I was sent up to be examined.

·Q. How did it come to your knowledge that there was employment open at the T. P. & W.?

A. I read it in the newspaper.

Q. You read it in the newspaper about the strike?

A. That's right, I read in the newspaper about they wanted men to work at the T. P. & W.

Q. Had you ever had any experience as a fireman before?

A. No, I haven't.

Q: This was your first work on any railroad engine of any kind, is that right?

A. That's right.

Q. You started out as a fireman?

A. Student fireman.

Q. And nothing happened that was eventful on the 29th when you went to work for them? Did you work on the 30th?

A. I did.

428 Q. In what capacity did you work?

A. Student fireman.

Q. There was nothing eventful that happened on the 30th, was there?

A. Well, offhand I don't recall anything.

Q. And on the 31st what time did you go to work that morning?

A. About 9 o'clock, I believe.

Q. At about 9 in the morning?

Around 8:30 or 9. A.

Q: Where did you report for work?

A. At the yards.

Q. What?

At the vards. A.

- And after you reported for work, where did you go? Q. Well, we stayed on the switch engine all day long.
- A. Q: On this engine, who all was in that?

A. Well, there was the engineer.

Q. What was his name?

Thielbert. This is the 31st? A. .

Q. Yes, I am talking about the 31st now. Thielbert was the engineer?

A. That's right.

Q. How long had you known Thielbert?

A. That was the second day I had known him.

And got pretty well acquainted those two days, is that right?

A. The first day I didn't work with him.

Q. Would you consider him a pa! of yours?

A. I believe so now.

I see. You had reported for work about 8:30 or 9 o'clock, and where did you go?

A. Well, we-I don't recall just what we did dur-429 ing the day, but we stayed in the yards most of the day. Q. And who was the fireman on this train?

1. Wilson Hardy.

Do you know where he is from? Q.

No, I don't. A.

Q. How long have you known him?

The first day I went to work, the 30th. A.

Q. You never saw him before, is that right?

That's right. A.

- Q. Who else was in there?
- A. There was a special agent.
- Q. Do you know his name?
- A. Thompson,-
- Q. Thompson?
- A. I believe.
- Q. And who else?
- Mr. Heilman,-A. Q. Who else?
- and a fellow by the name of Payne. Α.

Payne?

That's right.

Q. What was his first name? Do you know?

A. John Payne.

Q. It wasn't Carroll Payne?

A. No.

Q. Where was Payne from?

A. I don't know.

Q. And who else!

A. And Bob and Harley Widmer.

430 Q. They are from Washington, Illinois?

A. I don't know.

Q. And who else?

A. Offhand that's all I recall that was on there. Oh, Clarence Pullen.

Q. Who?

A. Clarence Pullen.

Q. Puling?

A. He was a brakeman.

Q. P-u-l-l-e-n?

A. I believe so.

Q. Where is he from?

A. I don't know.

Q. Have you continued to work for the T. P. & W. up to the present time?

A. I have.

Q. And, now, you don't know who pulled the angle cock, do you?

A. I don't.

Q. The fact of the matter is you don't know exactly what stalled the train, do you?

A. Yes.

Q. You say you had experience on the train before?

A. No.

Q. You had never had any train experience before?

A. That's right.

Q. You still know what stalled the train.?

A. I didn't then but I do now.

Q. You didn't then?
A. That's right.

431. Q. And you have since discovered what caused it?
A. Yes.

Q. Have you since performed that operation yourself to see how it would work?

A. I haven't.

Q. You have seen it done since that time?

A. I have.

Q. Who has done that?

A. A brakeman out there showed me.

Q. When you got off of the train, which side of the train did you get off on?

A. On the south side.

Q. That would be which side? The right or the left?

A. The left.

Q. Who got out first?

A. Mr. Heilman, I believe.

Q. Who was next?

A. The special agent that was riding with Thompson.

Q. And then who was next?

A. I don't recall; Wilson Hardy, I believe.

Q. And after him?

A: Well, the two Widmer boys got off.

Q. And who was next?

A. Pullen was next,

Q. And who was after him?

A. I was.

Q. Anybody else?

A. I don't know. I didn't see who got off after me.

432 Q. Now, when you got off there, you say you started running, and you were finally caught, is that right?

A. That's right.

Q. Do you know the filling station where you were caught?

A. I do.

Q. What is the name of it?

A. I don't know the name of it.

- Q. Is it located on Washington Street in East Peoria?
- A. I believe so. I believe that's Washington Street.

 Q. About how far is it from the Franklin Street bridge?

A. I would say approximately a hundred feet.

Q. About a hundred feet?

A. Or better. I imagine it would be nearer to a hundred vards.

Q. Nearer a hundred yards ?

A. Yes.

Q. Do you know what kind of gasoline they sell there? I am trying to identify the station.

A. I never looked to see.

Q. Which side of Wishington Street is it located on? North or south side? y

A. The south side.

Q. The south side?

A. That's right.

Q. You say this gentleman out here that you picked out who identified himself as William L. Brown, he is the one that hit you with this gas hose nozzle?

A. I saw him swinging it, and someone hit me.

- Q. Was there anybody else there you can identify?
- 433 Q. He is the only one that you recognize!
 A. That's right.

Q. That you recognize now?

A. That's right.

Q. As you were going up there, were you one of the men in the cab that was thumbing their noses at the man?

A. They was none of them thumbing their noses at these men.

Q. You had them under observation all the time?

A. No.

Q. You didn't do any cursing?

A. No, sir.

Q. Or call them "suckers"?

A. No, sir.

Q. How about the rest? Did you hear any of the rest of them call them "suckers"?

A. I never heard any of the rest saying anything to them.

Q. You didn't?

A. That's right.

Q. Then you returned to the engine, did you?

A. That's right.

Q. And you proceeded to go with the engine then?

A. That's right.

Q. Wo else returned to the engine?

A. The engineer and Mr. Heilman, and Payne.

Q. You say it was John Payne?

A. That's right.

Q. Did anybody else return?

A. Not that I recall.

Q. Did anybody else come up there?

A. At the time we were standing there?

Mr. Knoblock: I will withdraw that question.

Q. You say Heilman, Thompson, yourself and who else now got in the cab?

- A. I believe the agent rode with us. I am not positive about that.
 - Q. And Payne was also in the cab?

A. That's right.

Q. And then you proceeded on your trip, did you?

A. That's right.

Q. Was anybody else riding in or about the engine?

A. I believe Carroll Payne got on the engine.

Q. Anybody else? .

- A. Not that I know of. I couldn't see the footboard on the front or back.
- Q. You could not?

A. No.

Q. Did vou see Mr. McNear over there then?

A. I saw him at the accident, I saw him at the time after the fellows had left, after the engine was stopped.

Q. How long had you worked for the Hoover Company?

A. I started in June.

Q. Of this year?

A. That's right.

Q. Where did you work before that?

A. In the Corn Products at Pekin.

Q. Corn Products at Pekin?

A. That's right:

Q. Where is your home?

A. 3328 North Madison.

435 Q. Where were you born and reared?

A. Lawrenceville, Illinois.

Q. How long had you worked for the Corn Products plant at Pekin?

A. About three years and a half,

Q. You lived in Pekin during that period of time?

A. That's right.

Q. Where did you live in Pekin?

A. 1403 South 8th Street.

Q. 1403 S. 8th Street?

A. That's right.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

The Court: Call another witness.

Mr. Heyl: This second lady in the first row. Will you please come up and take the stand?

436 ANNA NEWDIGATE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Heyl.

Q. What is your name, please?

A. Anna Newdigate.

Q. What is your husband's name?

A. Delmar.

Q. Newdigate?

A. Uh-huh.

Q. And what is his connection with one of the Brother-hoods?

Mr. Knoblock: I object to that as not the best evidence.

Mr. Hevl: This is for identification.

The Court: What is the purpose? Is he here?

Mr. Heyl: I understand he is here, but I don't care to disclose to Your Honor the purpose of this, but it is for the purpose of identification.

Mr. Knoblock: He is the best man. There is nothing

to impeach yet.

Mr. Heyl: Lam not impeaching anyone.

The Court. I guess he is entitled to an answer.

Do you know what his connection is?

A. He is general chairman, that's about all I know.

Q. Of the Peoria group?

A. Brotherhood of Railroad Trainmen.

Q. And do you drive an automobile?

A. Occasionally.

437 Q. What kind of an automobile do you drive? A. A green DeSoto '40.

Q. Where were you on December 31, 1941, about 3:15 P. M.?

A. In my home.

Q. Were you in East Peoria any time that day?

A. No, I wasn't.

Q. On West Washington Street?

A. I was not.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

Trial recessed at 1 o'clock P. M. Trial resumed at 3:15 o'clock P. M. DON DuBOIS, recalled, having been previously sworn, testified as follows, in answer to:

Further Cross-Examination by Mr. Knoblock.

Q. Mr. DuBois, you are the same man that was on the stand when we took a recess here about 1 o'clock, aren't you!

A. Yes, sir.

Q: And with reference to your employment at the Corn Products plant at Pekin, that is where you say you were working?

A. That's right.

Q. What was the reason for your discharge there?

438 Mr. Elliott: Object; immaterial.

Mr. Knoblock: It is very material on the question of his veracity.

The Court: He may answer.

A. I was laid off or quit or fired.

Q. Why were you fired?

Mr. Elliott: We object to that.

The Court: I think the objection will be sustained.

Q. Isn't it a fact you took another employee's money down there, and were given six weeks to pay it back!

A. I did not.

Mr. Elliott: I object. The Court: He answered.

Mr. Heyl: I move to strike the answer as immaterial, not impeachment.

The Court: I scarcely see how they attack his credi-

bility, but he answered it, anyway.

439 JOSEPH F. ASHCRAFT, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Heyl.

- Q. What is your name?
- A. Joseph F. Ashcraft.
- Q. Where do you live?
- A. 1245 West Washington, East Peoria.
- Q. What is your business or occupation?
- A. I work in the trailer camp.

Q. Are you in any way connected with the T. P. & W.?

A. No. sir.

Q: Have you ever been?

A. No, sir.

Q. Were you subposinted as a witness to testify in this court?

A. Yes, sir.

Q. Do you recall on December 31, 1941, of some difficulty with reference to a train of the T. P. & W. which was stopped near the bridge?

A. I do.

Q. Where were you at that time?

A. I was just across the street.

Q. And on what street were you?

A. That's Washington Street.

Q. West Washington?

A. West Washington.

Q. And what did you see?

A. Well, at first I heard something like the air 440 brakes put on right quick like they might have stopped for a car on the crossing, and I went out to see if they hit a car.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

What did you see?

A. And when I looked over, I seen some men getting out of the engine.

Q. Which side?

A. On the left side.

Q. All right!

A. And they started to run, and there was four or five or six, I wouldn't say just how many, but, anyway, I think there was about five at the least. They was running, and one fellow got into an automobile, and a fellow run up to the automobile and pulled him out after he had got in, and another fellow run up the street, up Washington Street toward the garage. There was three or four after him, and they hit him with a nozzle of a gasoline filling station pump hose, it was.

Q. Did you see him then after he was hit?

A. After it was all over, I run up and tried to give him aid. He was lying face down on the ground and it was cold, and I tried to help him up out of the snow. He didn't get up right away, so finally he rallied a little bit, and I

picked him up and got him on his feet, and I walked him toward the gasoline station, and he figured he could take care of himself, and I handed him this nozzle. They had dropped that in the scuffle, and I handed it to him, and I don't know what he ever did with it.

Q. Will you describe that nozzle to the court, the size of it?

441 A. Well, it's a nozzle that you fill an automobile from a gasoline filling station. It's probably that long, the bose (measuring with hands).

Q. How long do you say? We can't get that into the

record.

A. Well, it's a foot. Q. And is it metal?

A. Yes, sir.

Q. Where was this man struck with the nozzle?

A. I couldn't say where he was struck; probably in the body or shoulder.

Mr. Knoblock: Wait a minute! I object.

The Court: Objection sustained. You didn't see where he was struck, is that it?

A. Yes.

Q. Did you see where the man was that struck him?

A. I saw the man, but I couldn't identify the man. Q. Can you identify any of the men you saw there?

A. I can identify the man that I picked up.

Q. Was it the gentleman that went out of the door when you came in?

Mr. Heyl: Is Mr. DuBois in the room?

(Mr. DuBois rises.)

Q. Is this the man here you picked up, or can't you see?

The Court: Stand up, and save time.

Is that the man?

A. Yes, sir.

Q. Is that the man you picked up?

A. Yes, sir.

Q. You can't identify the ones that assaulted him, can you?

A. No, I couldn't.

442 Q: How many were there around him at the time he was hit with this hose?

A. There was about three.

Q. Where was the rest of them?

A. They was going other directions. I don't know where they was at.

Q. Did you see any rocks thrown there that day?

A. Yeah, I seen some throwed at the engine, and broke some glasses out of the cab.

Q. Now, did you see any automobiles about there that

day?

A. Well, the one that the fellow got into and was pulled back out of. That was on the Washington Street side.

Q. Did you see any other cars there?

A. No. sir.

Q. Was this the man that was pulled out of the car that you have identified here in the court room as Mr. DuBois?

A. I couldn't say as to that.

Q. Now, where did you first see the men that were

being chased? Where did they come from?

A. They was coming out of the left side of the engine cab, and starting to run. I seen them climbing down out, and then they started running up the street.

Q. The other men were chasing them, is that right?

A. Yes, sir.

Q. Where did the other men come from?

A. I couldn't say,

Mr. Heyl: That's all. You may cross-examine.

443 Cross-Examination by Mr. Knoblock...

2. You say your name is Ashcraft?

A. Joseph F. Ashcraft.

Q. And you live at 1245 West Washington Street, East Peoria?

A. Yes, sir.

Q. How long have you lived there, Mr. Ashcraft?

A. Going on six years.

Q. And what work do you do there?

A. " I worked at the trailer camp.

Q. Where is that trailer camp located?
A. 1245 West Washington, East Peoria.
Q. What's the name of that trailer camp?

A. Bay View Trailer Park.

Q: Who runs that place?

A. Roy Evans.

Q. Roy Evans? And how long have you been employed by him?

A. Since March of last year.

Q. And who employed you before that?

A. A fellow by the name of—I know his name, but I can't think of it right now. He run the park before. He run it before Roy took it over.

Q. And Evans bought this trailer camp from this other

man, is that right?

A. He bought it off of the owners, Reeses.

Q. Reeses? A. Yes, sir.

Q. Did Reeses run this before Evans ran it?

A. Yes, si

Q. You were employed by them?

444 A. No, the fellow just ahead of them. They never did run it theirselves.

Q. I understand that now Have you worked any place outside of that trailer camp for the last six years?

A. No. sir.

Q. Where did you work before that?

A. I worked for myself. .

Q. What?

A. Peddling.

Q. Where?

A. Through the country selling vegetables.

Q. Where was your headquarters?

A. Well, I lived there six years.

Q. I know that, but where did you live before that?

A. I lived on Kerfoot Street, East Peoria.

Q. You lived on Kerfoot Street? What number on Kerfoot Street?

A. I think it was 225.

Q. Now, whom did you talk to about these matters that you have testified to here?

A. No one.

Q. Have you discussed it with either one of the attorneys for the plaintiff here?

A. No, sir.

Q. Did you discuss it with any representative from the T. P. & W.?

A. That was a man by the name of Cohen, I believe it is. He said he heard that I seen it. He come and asked me about it, and I told him what I seen. I didn't figure I would get into anything like this here.

Q. How far was this west-bound train from Wash

445 ington Street when you heard the air go on?

A. Well, it's right close on Washington Street

Q. I can't hear that.

A. Probably fifteen feet.

Mr. Knoblock: Wait a minute! I can't hear you because there is other talking.

The Court: Read what he said there.

(Two preceding answers and question read.)

A. It's about fifteen feet from the car crossing.

Q. That is where you heard the air go on?

A. Yes, sir.

Q. You don't know who turned the air on, do you?

A. No. sir.

Q. It might have been some members of the train crew that turned that air on?

A. Yes, sir.

Q. As far as you know?

A. Yes, sir.

Q. When this running and fighting started over there, there was quite a crowd around there, wasn't there?

A. Quite a crowd gathered after it started, yes, sir.
Q. How many automobiles would you say was there?

A. I seen the one that this fellow was getting in.

Q. There was other automobiles besides that one?

A. I suppose. I didn't pay any attention. I noticed this one in particular.

Q. Wasn't there an awful lot of automobiles around there?

A. No, sir.

Q. You couldn't say whether there was more than one?

446 A. They was coming up Washington Street, %

Q. Where were you standing when you saw this automobile?

A. Standing over in my yard.

Q. Where is your yard with reference to the fish market up there?

A: It's east of it.

Q. How far east?

A. Probably a hundred feet.

Q. Does your place front right on Washington Street!

A. Yes, sir.

Q. And then you were about a hundred to a hundred and fifty feet east of where the cab of that engine was when this started?

A. No. sir.

Q. How far east of it were you?

A. I wasn't east. I was west.

Q. You were west of the cab of the engine?

A. Yes, sir.

Q. How far,?

A. A hundred and fifty feet.

Q. That would take you clear past the bridge? Wasn't

Mr. Heyl: I object to the argument.

Q. Would that take you past the bridge?

The Court: "He may answer."

A. No. sir.

Q. How far would you say that engine was from that bridge?

A. From that bridge?

Q. Yes.

A. It was a hundred feet, hundred and twenty five feet.

Q. It was a hundred to a hundred and twenty-five feet from the bridge, and you were a hundred and fifty feet from west of the engine?

47. A. This is directly across at an angle.

Q. I understand. I know where that place is over there: Now.—

Mr. Heyl: I object to what you know.

It is immaterial.

Mr. Knoblock: I will withdraw that.

Q. How close was that engine to the bricks on Washington Street?

A. Probably twenty-five feet.

Q. About twenty-five feet, and it was You say you were a hundred and fifty feet west of the front end of that engine?

A. Yes, sir, the cab of it.

Q. The cab of that engine, and you still were not past, the first portion of the bridge, is that right?

A. To my knowledge, it is.

Q. All right. Now, who else was there with you when this thing happened?

A. No one was with me.

Q. You were there alone, is that right?

A. Yes, sir.

Q. All right. You saw these men getting out the left side of the cab, is that right?

A. Yes, sir.

Q. How many did you see get out of there?

A. Four to five.

Q. Four or five of them? Did you see them all get out?

A. Well, I seen a good share of them. That might have been more than that, but I seen that many.

Q. Did they run toward the bridge?

A. No, sir.

448 Q. What direction did they run?

A. They ran probably southeast.

Q. Southeast? Would that be across Washington Street?

A. That would be across Washington Street, after they

got across on our side.

Q. Did they get across on Washington Street to the south side there?

A. Yes, sir.

Q. Which men did that? Is that the man you picked up?

A. That man, and two or three other ones.

Q. They got across to the south side of Washington. Street, is that true!

A. That is true.

Q. How far was this man from the cab of the engine

when they caught him?

A. Well, he was over in that gasoline station when they first caught up with him. I would say it was a hundred and twenty-five feet.

Q. From the cab of the engine? ..

A. From the cab of the engine.

Q. And he broke loose and continued on, is that right?

A. Yes, sir.

Q. How far did he get the second time?

A. Probably seventy-five feet.

Q. How far east was he from the cab of that engine?

A. He would be about two hundred feet.

Q. All right. And he was on the south side of Washington Street at that time?

A. Yes, sir.

Q. Now, from the time they got to him the second 449 time, quite a crowd had gathered around there?

A. Not so many.

449 Q. How many would you say was there?

A. There was none up around them at the time.

Q. None at all?

A. Not up there. There was the men, about four of them, including this man.

Q. How many was around the cab of that engine?

A. None.

Q. None at all?

A. After they got out of it.

Q. How many people were there altogether at that time, would you say?

A. Of spectators?

O. Yes.

A. Oh, I wouldn't know.

Q. What is your best judgment?

A. Probably twenty-five.

Q. Did several of the spectators stop in their automobiles there?

A. No, sir, not that I seen.

Q. They all kept on driving, is that right?

- A. I couldn't say as to that. I wasn't watching automobiles.
- Q. I see. And the only automobile you saw is this one automobile DuBois got in and got out?

. A. I don't know if it was him that got out, but there

was one.

Q. You don't know who the man was that got in and out?

A. No. sir.

Q. You don't know who he was connected with?

A. No, sir.

450 Q. How far were you away from DuBois when these gentlemen caught him the second time?

A. Well, I was down to my place. I didn't follow up there.

Q. How far would that be?

A. Well, that's a good two hundred feet.

Q. Well, did you stand about in the same place from the time ou first saw this thing happen until they caught him the second time?

A. Yes, sir.

Q. You say DuBois was about two hundred feet east of the engine cab, is that right, when they caught him the second time?

A. Yes, sir.

Q. I thought at that time you told me you were a hundred and fifty feet west of the cab of the engine?

A. I was.

Q. You were almost three hundred and fifty to four hundred feet from him, isn't that right?

A. No, sir.

Q. You weren't?

A. No. sir.

Q. Did you remain about in the same place?

A. Yes, sir.

Q: Can you explain to me why you weren't three hundred and fifty to four hundred feet from him?

Mr. Heyl: I object to the argument.

Mr. Knoblock: I am not arguing. I am asking him to explain.

The Court: He may answer.

A. What was the question?

451 The Court: Will you say why you weren't three hundred and fifty to four hundred feet away?

A. Because on my judgment I figure it is two hundred

feet on the angles.

Q. You were as close to him, that is, DuBois, as be was to the cab of the engine?

A. I imagine it is, yes, sir.

Q. And you were a hundred and fifty feet west of the cab of the engine?

A. On the angle.

· Q. . And he was two bundred feet east of the cab of the engine!

A. On an angle.

Q. All right! Now, what time of the day did this happen?

A. I would say close to 4 o'clock.

Q. About 4 o'clock in the afternoon? A. I don't know just what time it was.

Q. There is a lot of traffic along there about that time?

A. There's quite a bit.

Q. A large portion of the shift of "Caterpillar" going to work?

A. There didn't happen to be at that time. They gen-

erally do.

Q. How do you know they didn't happen to be if you weren't watching any automobiles?

A. Well, there didn't happen to be that much traffic.

Q. How do you know there wasn't any traffic if you didn't see any automobiles?

Mr. Heyl: /I object to that.

The Court: Sustained.

A. There was not much traffic there.

Q. You don't know who the men were that were 452 chasing this man you have identified as DuBois, do you?

A. No, sir.

Q. You don't know if they were individuals connected with some other organizations or not than the T. P. & W., do vou?

A. I wouldn't know.

You never associated them with the T. P. & W. in any way or form, is that right?

A. Never.

And you have been working there at this auto park for six years?

Trailer park? A.

Trailer park.

No, I haven't. I have lived there going on six I didn't say I worked there that long.

You have lived there six years?

A. Yes, sir.

That's real close to where—to where the T. P. & W. trains cross the Illinois River, isn't it?

Yes, sir.

You have had an opportunity to observe those Q. crews go back and forth across that river every day for almost six years?

I do, but I never did pay any attention to them.

·Q. You didn't get acquainted with any of them?

A. Nor sir.

Do you know Mr. Kipling?

A. No. sir.

You don't? You say you worked there for six Q.

months, and lived there for six years?

- I worked for this man since March, and I worked. for the other fellow ahead of him from July until that March.
- Where did you work before that? 453 Q.

A. I worked for myself.

That's right. When you saw this man lying down in the snow, where did these other men go?

A. I don't know which way they went.

Do you have any idea of the direction they went?

A. No, sir.

Can you tell us how they were dressed?

No, sir.

Q. Can you tell us whether or not they were bareheaded or had hats or caps on?

A. No, sir.

Q. Could you tell whether or not they had coats or sweaters on?

A. I imagine they had some on. It was kind of a chilly day.

Q. I am not asking you what you imagine, but if you recall seeing them.

A. Sure, I seen them.

Q. Do you recall whether they were dressed in overcoats or sweaters, or just what they were dressed in?

A. I didn't pay that much attention to them.

Q. . Now, when did you first see this man with the nozzle in his hand?

A. Well, right up when they hit him up there where he fell.

Q. That is the first time you saw the nozzle, and you could see that in his hand clearly?

A. I could see it, yeah.

Q. And you couldn't tell which man had it, though?

A. No, sir.

Q. And how did you—What direction did he throw 454 it? Did he throw the nozzle?

A. No, I think it dropped out of the hand, slipped out of his hands.

Q. Slipped out of his hands?

A. Yes.

Q. Did you actually see him hit the boy with it?

A. I saw him swing with it. I can't say whether he hit him or not.

Q. Are you being paid a \$10.00 bonus for coming in here to testify?

A. No, sir.

Q. Did you see these men in the cab of the train prior to the air going on?

A. No, sir.

Q. You didn't see what they were doing?

A. No, sir.

Q. You only saw the activity around there concerning this one man that ran south, and about three fellows that were after him, is that right?

A. I seen them strike at the fellow that got in the automobile, and pulled him out, and then I concentrated

on this other feld going up the other way I don't know if it was the same man that was pulled out of the car. As soon as it happened, why, then, I was watching this other one.

Q. Where did you go while this was going on?

A. I just stood there and watched it until it was all over.

Q. I see. How far would you say it is from where you are sitting to where Mr. DuBois is sitting?

A. That is fifty feet.

Q. Fifty feet? You had difficulty identifying Mr. Du-Bois at that distance in this court room, didn't you?

A. Yes, I did.

455 Q. It is well lighted in here, isn't it?

A. Yes, sir.

Q. You were able to identify him that day a hundred and fifty to two hundred feet away?

A. No, sir, I did not. Mr. Heyl: I object.

The Court: He answered, said he did not.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. You got close enough to pick him up after you found him unconscious on the road there?

A. When I went up there.

Q. He was unconscious, wasn't he?

Mr. Knoblock: I object. The Court: Yes, sustained.

Mr. Heyl: That's all.

456 J. H. HEILMAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Heyl.

Q. What is your name?

A. J. H. Heilman.

Q. Where do you live, Mr. Heilman?

A. 131 South Eleanor Place, city.

Q. Peoria, Illinois?

A. That's right.

Q: How old are you?

A. Thirty-seven.

Mr. Knoblock: Was that 131 or 134?

A. 131.

Q. How long have you lived in Peoria?

1. Seventeen vears.

Q. What is your business or occupation?

A. My business is chief dispatcher and yardmaster for the T. P. & W. Railroad.

Q. How long have you had that employment?

A. Well, I have been chief dispatcher and yardmaster for four years.

Q. What was your employment before that?

A. Prior to that, I was night chief dispatcher and night yardmaster for approximately six years.

Q. Were you riding on engine number 70 December 13,

1941?

A. December 31 I was.

Q. December 31, 1941?

A. That's right.

457 Q. Now, will you tell what happened while you were

on that engine, and where?

A. Well, we had—Leaving the Peoria yard we had cars to deliver to the P. & P. U. Railroad. The delivery to the P. & P. U. Railroad was made without any incident, I might say. We also had cars to deliver to the Rock Island Railroad.

Q. Where was that delivery made?

A. Well, due to a more or less of a gentlemen's agreement, that delivery was made on what we know as the C. B. & Q. old house track.

Q. Which side of the river?

A. On the Peoria side of the Illinois River, and after making the delivery to the P. & P. U. Railroad we returned to our railroad, the main track, and picked up our cars that go to the—that were to go to the Rock Island, and after picking up the cars we proceeded westwardly to a point, what we commonly call the spillway, and at that particular point there was a series of rock throwing, attacks, you might say, on the locomotive, rrom there we went to the junction between Route 150 and West Washington Street in East Peoria, and at that point the air was set on the engine and the four cars that we had hold of:

Q. Was that air set while you were moving? ...

A. That's right.

Q. All right.
A. After that happened then, of course, we were unable to proceed, and momentarily rocks started to fly into the engine, knocking out the glass and the windows and so forth:

From which side were they thrown? Which side of the engine?

Well, they were thrown from the north side of 458 the engine, or from Route 8. That's the hard road.

That would be the right hand side?

That is the engineer's side, that's right.

Q. Go ahead and tell all that happened.

A. Well, after the attack started there at that point-You are concerned in what I did myself, is that right?

And what you saw, yes.

Well, I didn't see anything because I was looking for my security. The attack was so severe that I got in behind the boiler head of the engine.

Mr. Knoblock: I object to the form.

The Court: I think his answer may stand, where he got in behind the boiler on his engine. .

Q. Why did you get behind the boiler?

A. For safety. Q. For what?

Mr. Knoblock: I object to the latter part.

The Court: Go ahead and answer. What were you afraid of?

A. I was afraid of the rocks which were coming through the windows of the engine—

The Court: Go ahead and tell what happened.

That is the question.

A. —and after the barrage of rocks subsided, I left the engine from the south, or the left side. The purpose of that was to call for some aid, and it so happened that I saw an acquaintance who was in the line of traffic on the hard road, and I stepped in his car, and then shortly after I stepped in the car one of the employees stepped in the car, and after

I had closed the door this young man came up, and he

459 opened the door and came in.

Q. Do you know that young man? Who was the. young man?

A. Harley Widmer. Mr. Knoblock: Who?

Widmer, Harley Widmer, W-i-d-m-e-r.

Q. Go ahead.

A. And following that, after this Mr. Widmer had gotten into the car, there was an attack on the car.

Q. Whose car was that? ..

A. Sir!

Q: Whose car was this that you are talking about?

A. The car belonged to I just don't call that name now. The young man is in the room upstairs there.

. Q. Robert Callender!

A: That's right, Robert Callender. The car belonged to him.

Q: What happened? What did they do to the car?

A. After the two of us were in his car, then there was an attack on the car.

Q. Did you see anyone? Recognize anyone who made the attack on the car?

A. I did.

Q. Whom did you see!

A. Mr. John Gimming.

Q. John J. Gimming?

. That's right.

Q. One of the former employees of the railroad?

A. That's right.
Q. What did he do?

A. -Well, he thrust a brake club through the front window of the car.

460 Q. That is, the glass?

A. Where I was sitting.

Q. What did he say?

A. Well, I don't know that he said anything.

Q. How did he do that? Describe that to the court,

how he put the brake club through.

A. Well, I saw a certain—I saw a certain indication that he was going to put the brake club in through the window or make some sort of a motion with it, so I ducked

Q. Well, did he break the glass?

A. That's right, he did.

2. Then what happened after he broke the glass?

A. After he broke the glass, I told the young man. Mr. Callender, to proceed to the Union Station, and the purpose of that was to notify our officials of what had taken place. Mr. Widner didn't care to go to the Union Station at the outset, so we took him to the Illinois Light Company on Jefferson Street and let him out, out of the car, and from there we went to the Union Station and

reported the incident, and from there we went back to the engine where it was still stationed at Washington Street and Route 8, and from there we proceeded down to the C. B. & Q. track and set out the cars that we had, and from that point, after getting enough steam to proceed, we returned the engine to the T. P. & W. vard.

Q. You knew what cars were in that train?

A. Yes.

Q. What cars were in that train?

A. Well, we had cars in the train for the Rock 461 Island. I think there were three cars of bottles for Hiram Walker, and I am not clear about the other load, the fourth load.

Q. Now, was this Harley Widmer that you said got into Mr. Robert Callender's car one of the occupants of

that locomotive when it was stopped?

A. That's right.

Q. And an employee of this company?

A. That's right.

Q. Did he get out before or after you got off of the locomotive?

A. I was the first one off the locomotive.

Q. And you got off to go to a telephone to give the

warning, is that it?

A. The purpose of getting off of the locomotive was to go to a telephone, but after getting off of the locomotive I noticed an acquaintance and, of course, I commandeered him to help me out in the matter of notifying someone as to what happened.

Q. Did you see some other cars there?

A. I did not.

Q. I mean automobiles on the road.

A. There were many automobiles there, that's true, yes.

Q. Did you notice any that were driven by any of the striking former employees?

A. I did not.

Q. Did you recognize any of the persons who were throwing the stones?

A. I did not.

Q. Did you recognize any of the former employees of the railroad around about where this transaction occurred?

A. No, sir, more than what I have already stated.

462 Q. John J. Gimming?

A. That's right.

Mr. Heyl: I think you may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. You worked for the T. P. & W. about fourteen years, Mr. Heilman?

A. I have worked for the T. P. & W. twenty-nine years.

Q. Twenty-nine years?

A: Twenty-nine years and several months.

2. And you have been chief dispatcher and yardmaster

how.long?

- A. Well, I have been night chief dispatcher and yard-master since 1930 to 1937, and I have been day chief dispatcher and day yardmaster from 1937 up to the present date.
 - Q. What were you before 1930?

A. Track train dispatcher.

Q. And how many years were you employed in that capacity?

A. From July 5 in 1920 to that date.

- Q. What time did you go to work on December 31, 1941?
 - A. Well, I believe that I went to work about 6 A. M.

Q. Where did you report that morning?

A. I reported to the yard office in East Peoria.

Q. Was that your customary place of reporting in the morning?

A. That's right.

Q. And you have been reporting over there for how

many years?

A. Well, I have been reporting over there for—That is, taking regular assignment since July 1 in 1937, I have been reporting there at 7:30 A. M.

Q. Well, Mr. Heilman, after this incident that 463 you have discussed here near the corner—I wouldn't

say the corner, but the intersection there of the railroad and Franklin Street, did you cause any warrants to be issued?

A. No, sir.

Q. Did you call in or call upon any public officials or any law-enforcing bodies for assistance?

A. Are you speaking of Washington Street and Route

8?

. Q. Yes.

A. No, sir.

Q. And, as far as you know, has the plaintiff ever called

any public officials or police officials for assistance on that occasion?

A. The plaintiff would be-

Q. That would be the T. P. & W. Railroad.

A. I have no knowledge.

Q. You have no knowledge of that?

A. No.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

The Court: Call the next witness.

464 ROBERT CALLENDER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Robert Callender.

Q. Where do you live?

A. In Pekin, Illinois.

Q. What is your business or occupation?

A. Yard clerk.

Q. Working for the T. P. & W.?

A. Yes, sir.

Q. And on December 31, 1941, at 3:30 P. M. where were you?

A. Down at West Washington Street.

Q. I'didn't hear that.

A. West Washington Street crossing in East Peoria.

Q. What was your destination?

- A. I was going over to the Union Station to get my pay check.
 - Q. Were you walking or driving?

A. Driving.

Q. Was there anyone with you?

A. No, sir.

Q. What happened as you came along?

A. I had to stop for some traffic behind some ears, and I saw this engine stop at the crossing, and pretty soon I saw a special agent trying to get through the traffic, and he couldn't get through, and I drove up and the door opened on the right side and the chief dispatcher jumped in and said, "Let's go."

465 Q. Is that John Heilman, the gentleman that just testified?

A. That's right.

Q. Did anyone else get in the car?

A. They didn't then, but they did afterwards.

Q. Where!

A. In the back seat.

Q. When?

A. Just after Mr. Heilman got in.

Q. After Mr. Heilman and the other men got in the car,

what happened?

A. I started going toward Peoria, and about that time I saw a club coming at the window, and about that time I saw a car and I switched back and the club went through the right door window.

Q. What kind of a club?

A. A brake club.

Q. What is a brake club?

A. I guess it is hickory, sort of like a pick handle.

Q. How long is it?

A. About two and a half foot.

Q. How thick is it?

A. About two and a half inches thick at one end.

Q. What happened as a result of that throwing? Did it hit your car?

A. Yes, it hit the car, went through the window.

Q. Which window?

A. Bight hand front door window.

Q. What happened to the window?

A. It shattered.

Q. And what happened to Mr. Heilman?

466 A. I guess he ducked. I didn't see him. Q. Was he in the front seat?

A. Yes, sir.

Q. On the right side?

A. Yes, sir.

Q. Then what did you do?

A. I started on toward Peoria.

Q. Did you know the man who threw the club?

A. No, I didn't get a chance to see him. All I saw was the club.

Q. You saw someone out there, did you?

A. I seen someone out there.

Q. Did you have your car repaired?

A. Yes, sir.

Q. Where?

A. Earl Johnson, Chevrolet.

Q. W'n did you have it repaired?

A. Monday.

Mr. Knoblock: I object.

Q. When?

A. Last Monday.

The Court: He may answer.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Robert, how long have you worked for the T. P. & W.?

A. Oh, close to two years.

Q. Was there quite a few cars out there on the road when you came by on this occasion?

A. You mean on West Washington?

467 Q. When you stopped for traffic.

A. There was quite a few ahead of me.

Q. There was a considerable number of cars on the road right at that time?

A. Yes, sir.

Q. Going both directions?

A. I don't know about going both directions. They were going in one.

Q. Going, at least, in the direction you were going in?

A. Yes, sir.

Q. What time of the afternoon did you say that was?

A. Ob, a little after 3 o'clock.

Mr. Knoblock: That's all.

The Court: Call the next witness.

468 HARLEY WIDMER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Harley H. Widmer.

Q. Where do you live?

A. Washington.

.Q. That is Tazewell County, Illinois?

A. That's right.

Q. What is your business or occupation?

A. Car repair helper at the T. P. & W. Railroad. Q. How long have you worked for the T. P. & W.?

A. Seven years.

Q. And on December 31, 1941, were you on engine 70!

·A. That's right.

Q. What happened over at the approach to the Illinois.

River bridge near the Swords' Siding?

A. Well, we was coming along there. We stopped for a signal light of some sort for the bridge, and the air was turned on us some way, and we was all in the engine cab and rocks commenced to coming in there pretty lively, and I stayed there, I would say, two or three minutes, and I left on the left hand side of the engine.

Q. On which side of the engine were these rocks coming

from!

A. They was coming from the river side.

Q. That would be the right side?

A. That's right.

469 Q. The opposite side from which you left the engine?

A. That's right.

Q. And after you left the engine, what did you observe outside of the engine?

A. I seen Mr. Heilman get into a man's car, and I fol-

lowed him.

Q. You thought that would be a safe place for you, too!

A. I thought him being foreman of the engine, I would follow him.

Q. Did you see any other men around there chasing anyone?

A. No, I didn't; pretty busy getting away myself.

Q. After you got into this-by the way, do you know whose car it was?

A. I think it was Robert Callender's.

Q. Is that the boy that just preceded you on the witness stand?

A. That's right.

Q. What happened to that car after you got into it?

A. Well, there was a brake club came through the window:

Q. Did you see the man that threw the brake club!

A. No, I didn't.

Q. Did you see the club come in?

A. Yes, I did.

Q. What happened to the window?

A. The club came right on through it. It made a pretty fair-sized hole in the window, and the glass shattered in the car quite a bit.

Q. What happened to you and the rest of them that

was in the car?

A. They took us over to town, and I got out at the Light Company and went on home.

Q. That is the last you had to so with the transaction that day, is that it?

470 A. That's right.

- Q. Was Robert, your brother Robert, with you that day?
 - A. He was on the engine with us, yes.

Q. What happened to him?

Mr. Knoblock: Wait a minute!

Q. If you know?

The Court: What he saw happen to him? He may answer.

A. I never saw nothing. I left the engine.

Q. Is he here?

A. Yes, upstairs.

Mr. Heyl: That's all:

Cross-Examination by Mr. Knoblock.

Q. Mr. Widmer, you say you have been a car repair helper approximately seven years?

A. That's right, approximately seven years.

Q. Who all was in this engine cab on this date?

A. Well, I wouldn't know them by name.

Q. Well, you mentioned one man's name here awhile ago.

A. Robert Widmer. That's my brother.

Q. Did you mention another man?

A. Mr. Heilman.

Q. Do you know anybody else?

A. Wilson Hardy.

Q. Do you know anybody else in there?

A. No, I don't, not by name.

Q. Do you know who the engineer was?

A. No, I don't.

Q. Do you know who the fireman was? A. Mr. Hardy.

In what capacity were you acting in there?

A. Switchman.

You were acting as a switchman? In what capacity was your brother acting?

A. Switchman.

Did you see any special agents in there that day? Q.

Yes, there was one.

Q. Was he armed with a gun?

A. I wouldn't know.

You didn't see his gun?

No. I didn't. A.

Q. What time of day did you report for work?

A. 5 o'clock.

Where at?

A. At the roundhouse.

And how long had you been on engine 70?

That was the third-well, I wouldn't say that I was on engine 70, but that was the third day switching.

This engine you spoke about having been stalled, wasn't that engine 70?

A. That's right.

How long were you on engine 70?

Mr. Heyl: He answered it.

The Court: He answered, but answer it.

A. From 5 to about 3:15.

Q. About 3:15?

A. That's right.

Where had you been that day on that train? Well, we worked the yard, went to the P. &

P. U., and coming back to deliver to the Rock Island and the "Q."

Mr. Heyl: A little louder.

We was coming back to deliver to the "Rock" and the "Q" at that time.

You don't know who turned the air on, do you? Q.

A: No. I wouldn't know.

You have no idea who did it?

Α. No.

Q. Now, you don't know who threw the rocks, either, do you?

No, the curtains was pulled on the cab then.

And are you one of the men to whom a bonus of \$10.00 had been offered over and above your regular wages? A. Yes.

The Court: I didn't hear you.

A. Yes.

Mr. Heyl: I didn't, either.

The Court: Speak up so we can hear. Counsel can't hear you and I can't, and we are just wasting time. Speak up. If you work as a mechanic, you ought to make more noise than this. What is the question, next question?

Who offered that to you? Mr. Best?

A. Mr. Best.

The Court : Who?

A. Mr. Best.

When you got out to the hard road there to Mr. Callender's car, there was quite a number of auto-473 mobiles there on the highway, wasn't there?

A. I wasn't paying a whole lot of attention to that.

You wouldn't say there was, and you wouldn't say there wasn't?

A. No, I wouldn't.

Redirect Examination by Mr. Heyl.

One question I would like to ask, and it may be direct and not redirect. Now, what were-

The Court: All right.

What were the hours you were to work that day? We started to work at 5, and I don't know when we should have tied up.

The Court: What?

We started to work at 5 that morning, and I don't know what time we was supposed to tie up.

What is "tied up"? A.

Putting the engine away. Putting the engine away, and locking the doors, is that right?

That's right. A.

After this happened over on West. Washington Street, you quit for the day?
A. Yes.

Why did you quit? Mr. Knoblock: I object.

The Court: Yes, objection sustained.

474 ROBERT C. WIDMER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Robert C. Widmer. Q. Where do you live?

A. On Third Street, Peoria.

Q. Are you related to the young Mr. Widmer who just testified?

A. Yes, sir, brother.

Q. Were you on this engine 70 on the 31st of December, 1941?

A. Yes, sir.

- Q. And did you observe anyone turning the angle cock? A. I didn't see them do it, but the angle cock was turned.
- Q. Did you see any former strikers of the T. P. & W. at the rear of the train?

A. At the rear?

Q. Yes.

A. No, I didn't notice any at the rear.

Q. Where did you notice them?

A. At the head end of the engine.

Q. And along the train?

A. Yes.

Q. Where is this angle cock?

A. Well, it's on both ends of cars. There is one on each end of each car.

Q. On each end of each car?

A. That's right.

475 Q. May it be turned off and on at each end?

A. The only way you could set the air, if you cut the air hose you would have to cut it at the end of the cut.

Q. And all of your crew that were on the train were on the engine.

A. That's right.

Q. —is that right?
A. That's right.

Q. To work that angle cock, how would you have to do? What would you have to do?

A. Just turn the handle, just bring it around. It looks like an ordinary faucet, or anything like that.

Q. It is not automatic?

A. No, it isn't.

Q. You have to take hold of it to pull it?

A. That's right.

Q. When that angle cock was turned on or—then the

A. It dynamites your air.

Q. What is the result?

A. It sets all your air brakes, and it's impossible to pull your train.

Q. Does it set the air brakes on the engine, too?

A. Yes.

Q. What effect did the angle cock turning have to do on the train? What did it do with the train?

A. Just pulled the train to a dead stop.

Q. How fast was the train moving when it was stopped?

A. I imagine three miles an hour. We whistled for the board there.

476 Q. How do you know the angle cock was turned, and that the air brakes went on? Was there any outward sound beside the stopping of the train?

A. The only possible way the air could have got set off, either that or an air hose bursted, and there was no bursted air hose.

Q. Was there any notice?

A. Yes, it automatically sets your brakes up, and you can hear it.

Q. Did you hear it that day?

A. Yes, I heard it in the cab that day.

Q. When the engine came to a stop?

A. Yes.

Q. What happened around the engine?

- A. Brickbats started coming in, and I was ducking brickbats.
- Q. Did you notice the men that were throwing the brickbats?

A. I noticed some of them.

Q. What are their names? A. I don't know their names.

Q. Are they former employees of the T. P. & W.?

A. Yes, sir.

Q. Do you see them at the back of the court room, back of this railing?

A. I don't know as I do or not. I don't believe I do right at the present time.

Q. Did you recognize those men, not by name but by reason of the fact they were former employees of the railroad?

A. Yes, sir.

Q. How many men were out there that you noticed?

A. Two.

Q. Did you notice others later than that?

477 A. Yes.

. How many?

A. I would say I noticed those two, and about three more after that.

Q. What were they doing?

A. Well, running.

Q. Away from you?

A. After me.

Q. Did they chase you?

A. Yes, sin.

Q. How far did they chase you?

A. I imagine about thirty feet.
Q. And then what did you do?

A. I jumped in a truck.

Q. And got out of there?

A. Yes, sir.

Q. Where did you go!

A. Peoria.

Q. Did you go back to work that day?

A. Yes, sir. Not that day; the next morning.

Q. Why didn't you go back that day?

Mr. Knoblock: I object. The Court: Sustained.

A. Well,

Q. Do you know whose truck it was that you got into

A. It was a Peoria firm.

Q. Did you know the person?

A. No, I didn't.

Q. Did he invite you to get in?

A. No, he didn't.

478 Q. You just get on?

1. Yes, just got on.

Mr, Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Robert, what time did you go to work on the morning of December 30, 1941?

1. I believe it was 8 o'clock.

Q. 18 o'clock?

A. Yes, sir.

Q. And what engine did you go to work on?

A. I believe it was the 73. I am not sure.

Q. Engine number 731

A. I believe. I am not sure what engine it was.

Q. Do you know what the number of the engine was you just described the location—the rocks were thrown at?

A. No. I don't.

Q. Was that the same engine you went to work on that morning?

A. The same engine I went to switch on.

Q. And your brother and the rest of the crew went to work at the same time you did, is that right?

A. Yes, sir.

Q. Where did you go to work that morning?

A. Where did I go to work?

Q. Yes.

A. In the switching yards at East Peoria.

Q. Now, who all was in the cab of that engine when this attack took place that you are talking about?

A. John Heilman, H. Widmer and myself, DuBois and

Thielbert.

479 Q. I didn't get that last one.

A. Thielbert.

The Court: Who else, if you remember?

A. Two other men, but I don't know their names.

Q. Ilid you see one man in there carrying a gun?

A. No, I didn't.

- Q. You had a special agent with you, didn't you?
- A. Yes, Thompson was on that engine at the time.

Q. Did he carry a gun?

- A. I never noticed no gun.
- Q. You didn't see anybody turn the angle cock, did you?

A. No, sir.

Q. You don't have any idea who did it, do you?

A. No, sir.

Q. Now, was the same proposition given to you that

was given to your brother, that is, that you would get a bonus of \$10.00 a day above your pay while this goes on?

A. Yes, sir.

Q. Did Mr. Best offer that to you?

A. Yes, sir.

Q. He is the superintendent of the T. P. & W., is that right?

A. That's right.

Q. What was your job on the engine this day?

A. Pin puller.

Q. What?

A. Pin puller; switchman.

O. Switchman?

A. Yes.

Q. And what was your work prior to this day?

A. Car repair helper.

Q. And you are still a pin puller now?

A. No. sir.

Q. You are back helping repair cars?

A. Repair track.

Q. You saw two men there, you say, throwing rocks, and you couldn't state their names?

A. No. I couldn't.

Q. And you haven't been able to see anybody in the court room you can identify as them?

A. No, I haven't noticed anyone.

Q. Now, you don't know into whose truck you jumped that day?

A. No, sir.

Q. And these three men that you say were after you, you don't know who they were?

A. No, I do not.

Mr. Knoblock: I think that's all.

The Court: Is that all with this witness?

Redirect Examination by Mr. Heyl.

Q. This bonus you have been asked about was for working, was it not?

A. That's right; for working in train service.

Q. To keep on working in train service?

A. That's right.

Q. Is that bonus off now while you are doing this other work?

A. I don't know.

The bonus was given or offered in whatever 481 train service you worked in?

A. That's right.

There was no bonus offered you to testify in this case, was there?

A. No. sir.

Mr. Hevl: That's all.

The Court: I want to ask one question.

You were offered \$10.00 plus your switching wages, or plus your old wages?

A. Plus switchman's wages.

The Court: You were to get switchman's and \$10.00 a day?

A. Yes, sira

482 WILSON H. HARDY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q., What is your name!

Wilson H. Hardy.

Q. What is your age?

Ä. Twenty-nine.

Q. Where do you live? Rural Route 6, Peoria. A:

How long have you lived in Peoria or Tazewell Q. County? Where do you live in Tazewell County?

A.

Q. Rural Route 6 is in Tazewell County?

A. Yes.

How long have you lived there?

A. . I have lived three years at that address. How long have you lived in this community?

Q. How long have you lived A. Six years, going on seven.

What is your business or occupation?

Now I'm a fireman on the T. P. & W. Railroad.

The Court: Fireman?

Yes.

Mr. Knoblock: On the T. P. & W. road?

The Court: Go ahead.

Q. Now, you were a fireman on 70 the day it was stopped over on West Washington Street?

A. That was the 31st?

483 Q. December 31.

A. Yes, sir.

Q. What happened to you after this engine was stopped?
A. I got off the engine, and got away from there.

Q. Where did you go?

A. I went over to town, over to Peoria here.

Q. Was there anybody hurrying you up in getting offthe engine?

Mr. Knoblock: Objection.

The Court: Let him tell what happened. What happened!

Q. What happened? The whole story.

A. We got off and got in a passerby's car and went to Peoria.

Q. What happened before you got out?

Mr. Knoblock: Objection. The Court: He may answer.

A. The engine was being stoned, and it looked like the thing to do was to get away from there.

Q. Is that what you tried to do?

A. That is what I tried to do.

Q. Did you return to the engine?

A. No, I didn't.

Q. You left the engine there, didn't you?

A. Yes

Q. Do you know who carried you to Peoria?

A. No; I don't exactly. It was a panel truck belonging to either the Peoria Transcript or the Star. I don't know which of those it was.

Q. Did they invite you to get on?

A. No, they didn't. I opened the door and got in.

484 Q. And came on to Peoria?

A. That's right.
And did not return that day?

A. No.

Q. And as far—You do not know what happened to the engine after that of your own knowledge?

A. No, not of my own knowledge.

Q. Did you return to your work that day?

A. No, the next day.

Q. Did you have any injury as a result of what happened on the engine or what you were doing?

A. Yes, I had a slight burn on my wrist.

Q. How did that happen?

A. In the scramble to turn the blower off the engine.

Q. What is the blower?

A. That's a steam jet in the front end of the engine that lets steam into it to cause a forced draft.

Q. The engineer's station?

A. Not at the engineer's side; the fireman's side.

Q. In the front end of the engine?

A. This jet is in the front end of the engine.

Q. Where is the valve?

A. The control is on the fireman's side of the cab.

Q. That is in the rear of the engine?

A. Yes.

Q. What happened to that?

A. Well, I just turned it off before I left the engine.

Q. And, doing that, you burned yourself, is that it?

485 Q. What did the rocks do to the engine, if anything?

A. They broke the windows out on the right hand side of the cab.

Q. And you left from which side?

A. On the left hand side.

Q. And how far did you have to go to get into this truck that took you to Peoria?

A. Oh, it wasn't over twenty to twenty-five feet. It

was close to Washington Street there.

Q. Did you recognize any of the men that were throwing these rocks?

A. No, I didn't see any of those men.

Q. Any of them on the ground?

A. There wasn't any men on that side.

Q. On your side?

A. No, not at the time I left.

Q. As I understand it, this track comes into the center of a triangle made by two streets, is that right?

A. Yes; the state route on the north, and Washington

Street on the south.

Q. As you come into the bridge, enter the bridge, the right hand side of the engine would be facing the hard road?

A. Yes.

Q. Extending to the Caterpillar Trail, and on to Washington?

A. That's right.

Q. And on the left side of the engine would be West Washington Street?

A. That's right.

Q. And you cross West Washington at that point where these two roads come together?

A. I didn't cross Washington Street.

486 Q. The railroad crosses West Washington at that point, does it not?

A. Yes.

Q. And the two roads come together and enter the east end of the bridge?

A. The Franklin Street bridge, yes.

Q. And you ran out the left side of the engine, and got into a car?

Mr. Knoblock: I object.

The Court: Yes, he testified to that.

The objection will be sustained.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Hardy, how long have you worked for the T. P. & W.?

A. Six years last September 10.

Q. And in what capacity have you been working there?
A. Well, I started as a laborer, and I have been car
repair helper most of the time.

Q. You were a car repair helper immediately prior to

December 31, 1941?

A. No, just prior to that I was working for Grafelman

in the store department.

Q. Working for Grafelman in the store department? And then who asked you to change jobs on December 29?

A. Harlan Best offered me a job.

Q. And he offered you a bonus of \$10.00 over and above whatever the fireman's pay would be, is that right?

A. That's right.

Q. And, as I understand it, you did not recognize any of the boys there on this occasion?

487 A. No, I didn't.

Q. Did you ever have anyone arrested as a result of this—

A. No.

Q.—occasion you have spoken about over there?

Have you ever brought it to the attention of any public officials or law-enforcement officers?

A. No, I haven't.

Q. You never requested any law-enforcement officers to attempt to investigate the matter or do anything about it, is that right?

A. Yes.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

The Court: I think we will take a recess for about five minutes.

(Recess.)

488 WALTER COMPTON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

- Q. 'State your name to the court.
- A. Walter Compton.
- Q. Where do you live?
- A. Chillicothe, Illinois.
- Q. What is your business or occupation?
- A. Engineer.
- Q. And how old are you?
- A. Forty-nine.
- Q. And how long have you been an engineer?
- A. Twenty-four years.
- Q. For what railroad?
- A. A. T. & S. F.
- Q. That is the Santa Fe, is it?
- A. Yes, sir.
- Q. And on December 31, 1941, were you an engineer on the T. P. & W.?
 - A. Yes, sir.
 - Q. And what run?
 - A. Extra east.
 - Q. From Peoria, Illinois?
 - A. Yes, sir.
 - Q. That is my mistake. It was January 1.
 - A. Extra west January 1.
 - Q. December 31 you were extra east 40,—A. Yes, sir.
- 489 Q.—Is that right? And January 1, 1942, you were extra 40 west,—

Yes, sir.

-is that right?

That's right.

Now, on the day of December 31, '41, where did you start on your trip!

Peoria.

Ø. And in which direction did you travel?

What was your destination?

A. Effner.

Indiana?

A. Indiana.

Did you travel to Effner, Indiana, that day?

Ã.

Q: And then on January 1, 1942, about 8 o'clock in the morning you returned?

A: Yes, sir.

And then the train was known as extra 40 west, is that right?

Yes, sir. A.

Did you have any difficulties or unusual occurrences on the trip east?

A. No. sir.

On the trip west January 1, what happened at Fairbury?

We were setting out grain cars, and when we returned out of the track we were setting the cars out in, the derail was thrown back on the rail.

Q. Do you know when that was thrown? A. No, sir.

Q. Well, could you tell from your movement over the track when it was thrown?

Mr. Knoblock: I object.

The Court: He may answer.

Before or after you moved in?

The Court: If he can tell, he can answer.

(Question read by reporter.)

- It was thrown while we was in the track. Before we returned out on the track, it was thrown back on the rail.
- Do I understand you as you moved over this track Q. it was not thrown?
- It was thrown when we moved over it. Before we come out of the track, it was thrown back on the rail.

That was the result of the derail?

A. The derail was on the track when we came out.

Q. As I understand it, when you went into the switch you took the derail off?

A. Yes. sir.

Q. So that the train would not be derailed?

A. Right.

Q. Is that right?

A. Right.

Q. You were coming back over that same track, were you?

A. Yes, sir.

Q. When you came back, what did you find with reference to the derail?

A. The derail was on the track.

Q. What would be the result of traveling over it?

491 A. Probably derailed the engine.

Q. Did you intend, when you went in there, to put the derail on after you came out?

A. After we had used the track, we would.

Q. But before you got out, did you intend to have it done?

A. No, sir.

Q. Where were your men and your crew? Where were the men that were with you at that time that this was thrown?

A. Spotting cars at the elevator.

Q. I can't hear you.

A. Spotting cars at the elevator.

- Q. Did you see them while you were moving in and out?
 - A. I saw them while we was moving in, yes, sir.

. Mr. Knoblock: I can't hear.

The Court: Speak louder, if you will.

A. I saw as we was moving in, took signals from them.

Q. Did either of these men go out to where the derail was when you were doing this switching?

A. No, sir.

Q. Did any of the men on your crew go out to the point on the rail or on the track where this derail was?

A: Not until after I stopped the engine.

Q. And why did you stop the engine?
A. Because the derail was on the track.

Q. When did you discover that? A. While we were moving out.

Q. Which way were you traveling as you were moving out? Backing out or going forward?

A. We were going forward.

492 Q. Now, at that time did you see any automobiles traveling around in that vicinity?

A. I did not.

Q. What happened after you left Fairbury and came toward Peoria with that same train?

A. There was something thrown at the engine when we came through Washington, Iillinois.

Q. Do you know what it was?

A. No. sir.

Q. Was there anything that happened to any of the windows?

A. No. sir.

Q. Anything happen at Farmdale?

A. Something thrown at the train, on the left hand side of the engine.

Q. Now, at Washington, which side did you receive the stones from?

Mr. Knoblock: Wait a minute!

The Court: He has testified something was thrown. On which side of the train was it, if you know?

A. Both sides.

Q. What windows were broken?

Mr. Knoblock: I object.

The Court: Let him state what happened. Were the windows broken around there?

A. Yes, sir, on the right side. The Court: State what it was.

A. The windows on the right side.

Q. Of what?

A. Of the cab on the engine.

Q. That is, the cab on the locomotive?

493 A. Yes, sir.

Q. That is the side where you were?

A. Yes, sir.

Q. Did you see that window broken?

A. Yes, sir.

Q. Do you know how it was broken?

A. With some object thrown is all I know.

Q. Did you see the object later?

A. No, sir.

Q. Where did it go?

A. I don't know.

Where did that occur? Q.

Washington. A.

That is in Tazewell County?

Yes, sir.

On this railroad? Q.

A. Yes, sir.

Dnd anything happen after that as you went by Farmdale?

There was something thrown at Farmdale on the left side of the engine.

Q. Was there any damage as a result of that?

No. sir.

Q. What portion of that train that you brought into East Peoria did you take at Effner? Were any of the ears you brought into East Peoria picked up at Effner!

A. I don't know anything about that.

Well, when you started that morning, the engine and tender started at Effner?

The engine and tender and the way car.

And that came all the way through, did it?

Yes, sir.

And the same engine and tender started at Effner, Indiana, that you drove into East Peoria on that railroad?

Yes, sir. A.

Q. That same day?

Yes, sir; not the same day—the next day.

Q. On January 1 you returned to East Peoria?

Α. Yes, sir.

What time did you leave Effner that day?

6:50, I think. A.

And it was a continuous trip from that time on until you got to East Peoria,-

A. Yes, sir.

-except for switching along the line?

Yes, sir.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Mr. Compton, how long have you lived in Chillicothe?

About thirty years. A.

And when did you first go to work for the Santa Fe? .

A. 1913.

Q. And how long did you remain in their employ?

A. About twenty-four years.

Q. When did you leave their employ?

A. 1937.

Q.- And what was the reason for your leaving their employ?

495 A. Disobeying operating rules.

Q. What operating rule did you disobey?

A. I don't know.

Q. Could it have been Rule G?

A. No, sir.

Q. When did you first enter the employ of the T. P. &

A. December 30, 1941.

Q. And had you been employed by any railroad company from 1937 until December 30, 1941?

A. No, sir.

Q. And what—Were you one of the men that was given a \$10.00 bonus besides your regular rate of pay?

A. Yes, sir.

Q. What was the regular rate of pay that was given you here on the T. P. & W.?

A. Well, as I understand, \$9.56 per hundred.

Q. And on top of a day's work, you got an additional \$10.00, is that right?

A. Yes, sir.

Q. You were to get an additional \$10.00?

A. Supposed to.

Q. And Mr. Best offered it to you, is that right?

A. Right.

Q. Now, he is superintendent of the road?

A. Yes, sir.

Q. You started from Peoria on December 31, 1941, on extra east 40, is that right?

A. Yes, sir.

Q. What time did you leave Peoria?

496 A. At 8:45.

Q. In the morning?

A. Yes, sir.

Q. And what time did you arrive in Effner?

A. 8:20 P. M.

Q. In the evening?

A. Yes, sir.

- Q. Who was on that train?
- A. You mean the crew?
- Q. Yes, who was on that train?
- A. I had a fireman by the name of Leasure, I believe.
- Q. And who else?
- A. Walker.
- Q. Walker? What did he do?
- A. He was supposed to be an instructor, I believe.
- Q. He was an instructor?
- A. Firemen.
- Q. For the firemen?
- A. Yes, sir.
- Q. Well, did you have some student firemen on there?
- A. I think Leasure was a student fireman.
- Q. Any others?
- A. No, sir.
- Q. Who else was on there?
- A. When we arrived at Effner, nobody. Nobody when we arrived at Effner; nobody was on there.
- Q. You mean to say that all that was on your train was yourself and Leasure and Walker?
 - A. That was the engine crew.
- 497 Q. I want the whole crew. Who else was on there!
- A. Well, the operating—The ones that operated the train, that's all that was on there, outside of the train crew.
 - Q. I want to know who the train crew was, too.
 - A. I don't know the train crew.
 - Q. You don't know who they were?
 - A. No, sir.
 - Q. Do you recall a man on there by the name of Smith?
 - A. No, sir.
- Q. Do you remember a man on there by the name of Kane?
 - A. No. sir.
- Q. Do you remember any special agents on there of any kind?
 - A. There was special agents on there, yes, sir.
 - Q. Do you know what their names was?
 - A. No, sir.
 - Q. They carried guns, didn't they?
 - A. I didn't see any guns.
- Q. They weren't the regular special agents of the T. P. & W., either, were they?

A. I don't know.

Q. There was a special agent's car that was driving along the highway, following your train, too, wasn't there?

A. I don't know.

Q: You wouldn't say there wasn't?

A. I wouldn't say.

Mr. Heyl: He said he didn't know. The Court: He said he didn't know.

Q. Did you have a man on there by the name of Jacob

Armstrong?

A. I believe he was the conductor. I am not sure.

498 Q. Did you have a man on there by the name of Handley?

A. I don't know.

Q. Did you have a man on there by the name of Douglas?

A. I don't know.

Q. Did you have a man on there by the name of Mc-Kinney?

A. I don't know.

Q. You never heard of McKinney in any way?

A. No, sir.

Q. Now, going over, your trip was completely uneventful, is that right?

A. Yes, sir.

Q. Coming back, you had no trouble or there was nothing eventful happened until you got to Fairbury?

A. Right.

Q. What time did you get into Fairbury?

A. I couldn't tell you the exact time.

Q. What is your best judgment?

A. Well, I didn't keep any report or anything so I couldn't tell you. It was in the afternoon sometime.

Q. In the afternoon?

A. Sometime.

Q. It was daylight?

A. Yes, sir.

Q. What time did you get into Peoria that evening?

A. I believe it was around 10 o'clock.

Q. At night? .

A. Yes, sir.

Q. How long did it take you to come from Fairbury to Peoria?

A. Well, sir, I don't know.

499 Q. What is your best judgment?

A. About eight hours.

Q. And how many miles is it from Peoria to Fairbury?

A. One hundred and eight,

Q. One hundred and eight miles?

- A. From Fairbury to Peoria it's about fifty-eight miles, I would judge.
- Q. And you consumed eight hours in that trip from Fairbury to Peoria?

A. Yes, sir.

Q. Now, you didn't see anyone go to that derail switch there in Fairbury after you had backed into it, did you?

A. I did not.

Q. And, as far as that goes, it may have been some of the members on your crew that handled it, isn't that right?

A. No, sir.

Q. You don't know where they all were, do you?

A. I know there was nobody ahead of us.

- Q. You don't even know who the men on your crew were?
- A. I do not, but I know there were no men that belonged on our crew.
- Q. If you didn't know who your crew was, how could you tell?

Mr. Heyl: I object to the argument.

The Court: Yes. He said none of his crew was ahead of him.

Q. Somebody threw your switch, and you didn't see that?

Mr. Heyl: He answered that.

A. Yes.

500 The Court: He answered that.

Q. You don't know where all the members of your crew were while you backed into that switch, did you? You didn't have all of them in your sight, did you?

The Court: He may answer that.

A. No, I don't know where they all were; no.

Q. If you don't know where they all were, you wouldn't know what they would be doing, would you?

A. I knew where they were afterwards.

Q. Now, you say something was thrown through the windows at Farmdale and at Washington?

Mr. Knoblock: Where else did he say? The Court: Washington.

A. Yes.

Q. You didn't see anybody throw anything, did you?

A. No. sir.

Q. And if anything was thrown, you don't know by whom?

A. No, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

The Court: Have you another short witness or not? (Discussion off the record.)

501 W. A. WALKER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyi.

- Q. What is your name?
- A. W. A. Walker.
- Q. How old are you?

A. Fifty-two.

Q. Where do you live?

A. Forrest, Illinois.

Q. What is your business or occupation?

A. Engineer.

- Q. How long have you been an engineer?
- A. Since 1928 until 1934, when I was laid off.
- Q. .Did you enter the service again?

A. No, sir.

Q. Were you working for the T. P. & W. on December 30, 1941?

A. Yes, sir.

Q. And on December 31, 1931, were you on extra 40!

A. Yes, sir.

Q. December 31, 1941?

A. '41.

Q. And then were you on extra 40 west on January 1, 1942?

A. Yes, sir.

Q. What time did you leve Effner, Indiana?

8 o'clock. 8 in the morning.

What were you doing on that train? Q.

A. Instructing the fireman.

502 And where were you riding?

A. On the engine.

Do you recall when that train reached Fairbury in the afternoon of that day?

Yes, sir.

And did you do some switching at Fairbury? Q:

A. Yes, sir.

Q., Wheref

On four elevator tracks. A.

And where are those four elevator tracks located?

Two on the south side of Main, and two on the A. north.

Where are they located with reference to the station at Fairbury?

Well, there's two on the east side of the station,

and two on the west side.

Now, when you were making this switch, did you. observe the switch-

Yes, sir. A.

-at the derail?

Yes, sir.

What happened when you got up to the switch as you went in?

We went into the elevator track and set out five cars, and coming out noticed the derail had been placed on the rail.

Did you stop?

A. Yes, sir.

Did you notice whether the switch was lined up-

Yes, sir.

-then as it was when you went in?

A. kes, sir.

What would that indicate to one if you were watching the switch?

503 Mr. Knoblock: I object.

The Court: He may answer.

I just looked at the rail and seen the derail was thrown on it

Q. What would the switch indicate if it was lined up?

A. It would indicate red.

Did it indicate red? Q.

A. Yes, sir.

Q. It was open?

A. Yes, sir.

- Q. Where was the derail with reference to the switch?
- A. It was about maybe a hundred, hundred and fifty feet from the switch.

. Which way?

A. / East.

Q. Now, who were the members of the crew while the cars were being set in the switch?

A. Trainmen?

Q. Yes.

A. Armstrong, McKinney and a lad they call "Lindy."

Q. Those were the only ones?

A. They were the only ones that were there, I believe.

Q. Were they with you?

A. They were back doing the work on the ground.

Q. Where?

A. Setting out the cars back of the engine.

Q. That would be east or west?

A. East of the engine.

Q. Which way did you travel after you set out the cars—

A. West.

504 Q. —until you got to the derail?

A. Traveling west.

Q. Were any of these men you have named at all near this derail while you were switching these cars?

A. No, sir.

Q. Where was the balance of your crew?

A. I don't know. I guess the other fellows was on the caboose or flagging. I only seen three.

Q. Where did you leave the caboose?

A. East of the depot.

Q. How far east?

A. I don't remember.

Q. Was it some distance?

A. Not so far.

Mr. Knoblock: I object.

Q. Were they anywhere near the derail?

A. No.

Q. Have you any judgment as to the distance between the place where you left the caboose and the rest of the train and the derail? A. Oh, three or four or five blocks, something like that,

so far as I can figure.

Did you or not see the men you left there with the caboose and the balance of the train when you went up to switch these cars?

Mr. Knoblock: I didn't get that question.

The Court: Read the question.

(Question read by reporter.)

All I saw was the trainmen that was working helping set the cars out.

Q. Now, after you went into this switch track with these cars to set out these cars, the switch was open then?

Yes, sir. A.

Q. That is, the track was open, is that right?

A.

The derail was off? Q.

A. Yes, sir.

Were any of your men at or near the place where this derail was located from that time until you returned and found the derail had been put back on?

A. No. sir.

Q. Was there any other engine or train over that track where that derail was located-

A. No. sir.

-from the time you went in and came back and found it on?

A. No. sir.

Any members of the crew there?

A: No. sir.

Q. Did any member of the crew throw the derail?

A. No, sir, I don't think they did because they was all back behind the engine working.

What happened in Washington?

Mr. Knoblock: I object.

A. A few rocks was thrown.

What is that? Q.

A. A few rocks was thrown at the cab.

Anything happen at Farmdale?

Same thing.

Q. Any windows broken?

506 . A. I think there was a windshield and one window pane broken on one side at Washington.

O. Of the engine?

Yes, sir.

That was at Washington?

Yes, sir.

Mr. Heyl: That's all: Cross examine.

Cross-Examination by Mr. Knoblocks

Mr. Walker, how long have you lived at Forrest, Illinois?

A. Since 1924.

And what was the first railroad company you started: to work for?

Minneapolis and St. Louis. A.

Q. What year was that?

A. 1907.

Q. How long did you remain with them?

A. About a year.

What was the next railroad company you went to Q. work for?

Illinois Central. A.

When did you go to work for them? Q.

1910. A.

Q. How long did you work there?

A. There about four years.

What type of work did you do on the Minneapolis Q. road!

Fireman. A.

What type of work did you do on the Illinois Central?

Fireman.

Q. You stayed on the Illinois Central until about what year?

A. 1914.

Q. Then what road did you go with? 507

A. Went to the M. & St. L. at Monmouth, Illinois.

Q. What year was that?

A. That was 1915. Q. A. What type of work did you do there?

Fireman.

Q. How long did you work for them?

A. I was laid off in three months; got the board.

When did you go to work for the railroad after Q. that?

I went to the C. B. & Q. A.

When did you go there? Q.

A. I went there in 1916.

What type of work did you do there? Q.

A. Fireman.

Q. How long did you stay there?

A. '19.

Q. 19191

Å. 1919.

Q. What was the next railroad company you went to work for?

A. Santa Fe.

Q. What year did you go to work for them?

A. About September, 1922, until 1924.

Q. And what type of work did you do there?

A. Fireman.

Q. What was the next railroad company you went to work for?.

A. Wabash.

Q. When did you go to work for them?

. Hired there in 1924 as a fireman.

Q. How long did you work for them?

508 A. Until 1934.

Q. What was the next railroad company you went to work for?

A. T. P. & W.

Q. And you went into their employ on the 30th day of December, 1941, is that right?

A. Yes, sir.

Q. Are you also one of the men that has been promised a bonus of \$10.00 a day over and above your regular pay?

A. I was told I would get that. Q. Mr. Best told you that, did he?

A. Yes, sir.

Q. What is your regular pay as understood?

A. Well, I don't thoroughly understand all the schedule yet. I understand it is \$9.56.

Q. You mean their schedule? A. I think that is what it is.

Q. Have you studied that schedule quite a bit?

A. Lhaven't had a chance yet, Q. You haven't had a chance?

A. No.

Q. You left Peoria. Wait a minute. You went to work on December 30, 1941, but you didn't go on this extra east until the next day, did you?

A. No.

Q. What type of work— What type of work did you do on December 30, 1941?

A. 30th?

Q. Yes.

A. The 30th I was held in, didn't go out at all.

509 Q: Now, how did you acquire the knowledge that there was positions open here on the T. P. & W.!

Mr. Heyl: I object to that as immaterial. The Court: Oh, I think he may answer.

A. It was well advertised.

Q. And you went to work then? You actually went out on the run on the 31st?

A. 31st, 1941.

Q. What time did you leave?

A. Called for 6:30 in the morning, I think it was. I am not sure now. I don't have a time slip.

Q. Who was on that crew?

A. Engine crew?

Q. Yes.

- A. Well, there was Walt Compton, myself and Russell Leasure.
- Q. And who else was on the train crew then? I mean on the switching crew or the crew.

A. The conductor was Armstrong, brakeman, McKinney.

Q. The conductor was Armstrong, and who else?

A. McKinney, brakeman.

Q. McKinney was the brakeman?

A. Yes, and a lad they called "Lindy". I don't know his full name.

Q. What was his particular work?

A. Brakeman ..

Q. And anybody else?

A. I don't know what the other fellow's name was. I never heard.

Q. Was that all on the train?

A. All outside of special agents.

Q. How many on the train?

510 A. One on each end, I think. Q. They were both armed?

A. I think they were.

Q. You saw their guns, in fact?

A. Oh, yes.

Q. This switch at Farmington-

Mr. Elliott: Fairbury.

Q. —Feirbury, when you backed into that switch, you did not see its condition because you were at the other end of the train, wasn't you?

A. I was on the engine.

Q. You didn't see what the condition was?

A. I couldn't see it from the left side.

Q. You could see it?

A. I couldn't. It is on the nuorth side of the track. Q. When you came out of there, or while you were in

Q. When you came out of there, or while you were in there, you don't know— You didn't see anybody about that derail, did you?

A. No, sir.

Q. How far were you from it? A. Going in or coming out? Q. After you got back there.

A. Several cars back of the derail at the elevator.

Q. How far would you say?

A. I can't judge it.

Q. Give us your best judgment.

A. About a block or a block and a half; something like that.

Q. What time did you get into Fairbury?

A. I don't remember that time.

511 Q. What is your best judgment?
A. It was in the afternoon sometime.

Q. Daylight? A. Yes, sir.

Q. There wasn't anything to have obstructed your view in that one block or block and a half where the derail was?

A. No. sir.

Q. You didn't notice anybody around there?

A. No, sir.

Q. Nobody else in the cab you were riding made any remarks about anyone being around the derail, did they?

A. Not that I heard.

Q. With reference to the rocks at Washington and Farmdale, you don't know what was thrown, do you?

A. I do not.

Q. And you don't know by whom, do you, either?

A. I do not.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

The Court: We will stop at this point.

Trial Adjourned at 5:30 o'clock P. M.

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January 12, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

Appearances: Same as before.

R. T. ASHBURN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. R. T. Ashburn.

Q. Where do you live, Mr. Ashburn?

A. In East Peoria.

Q. Whereabouts in East Peoria?

A. At 300 East Washington.

Q. And what is your business or occupation?

A. Working at the T. P. & W.

Q. And how old are you?

A. Thirty-five.

Q. Were you a brakeman on extra 43 west, departing from the Peoria yard about 9:30 A. M. on December 31, 1941?

A. Yes, sir.

Q. And I will ask you if you observed any difficulty at Hollis, Illinois, west of Peoria on that run?

A. Yes, sir, I did.

Q. And about what time did that occur?

A. Well, that was about 10 o'clock. It was about 513 thirty minutes after we left out of the yards.

Q. Where were you on that train?

A. I was on the caboose.

Q. On the caboose?

A. Yes, sir.

Q. What did you observe?

A. Well, a lot of rock throwing.

Q. And do you know the source of those rocks? Where they came from?

A. Yes, they was coming from the highway, and all along the road. .

I didn't hear that. All along the road.

Can't you speak up a little?

Throwed from the highway along the right-of-way along the highway as we went along.

When you reached Hollis and the train stopped,

what occurred?

There was a bunch of cars, and they started throwing from the box cars, top of the box cars, down into the cab, and all along.

Did you receive any injury at that time?

A. . Yes, sir.

Q. What injury did you receive? A.. Tooth, broken tooth. Q. A little louder.

- A broken tooth.
- Q. What caused that?

From a rock.

That was thrown at that time?

A. Yes. sir.

Q. Did you lose that tooth? A. Yes, sir, knocked it out.

Q. Did you receive any other injuries?

A. No, sir; just the tooth.

You were on the caboose of this extra 43 west when that occurred?

Yes, sir.

Did you recognize any of the men who were throwing the rocks?

A. No, sir, I didn't.

Q. Was that stop made at the Peoria Terminal switch, or near there? Telephone-

A. I am not acquainted down through there. I am new, and it was—I know it was while they stopped in Hollis.

Q. It was the only stop you made after reaching the Allied Mills crossing until you got to Canton—or Glasford, wasn't it?

A. Yes, sir.

Mr. Hevl: Cross examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Ashburn, you say you are now living at 300 East Washington Street, East Peoria?

A. Yes, sir.

Q. How long have you lived in East Peoria?

A. About five months.

Q. Where did you come from before that?

A. I came from Texas.

Q. Texas?

A. Yes, sir.

Q. Did you work for a railroad down there?

515 A. No. sir.

Q. Had you worked for any railroad prior to going to work for the T. P. & W.?

A. No, sir.

Q. This is the first railroad work you had done, then?

A. Yes, sir.

Q. And in what capacity were you on this train on this particular day?

A. Brakeman.

Q. As a brakeman?

A. Yes, sir.

Q. When you were in Texas, what was the nature of your work?

A. I worked for the Borden Milk Company.

Q. Borden Milk Company?

A. Yes, sir.

Q. In what capacity?

A. As a truck driver delivering milk.

Q. When did you first go to work for the plaintiff in this case? On what day?

A. It was on Monday. I don't remember the date. It

was-It has been two weeks today

Q. Are you one of the men that has been offered a \$10.00 bonus over and above your regular rate of pay in this case?

Mr. Heyl: I object to the form of the question. It's indefinite, and the bonus was not for the case, but for work.

The Court: I think he may answer.

Were you or not?

(Question read by reporter.)

516 Mr. Heyl: I want to make the further objection that it assumes that the change in rate of pay related to this case, which is not the fact, and misleading.

The Court: I don't understand it does relate to this case, but is a matter of employment.

Mr. Heyl: It is a matter of employment, but has noth-

ing to do with this case. They are not-

The Court: I think he may answer whether or not he was.

Did you answer?

A. Yes.

The Court: Were you or not?

A. Yes.

Q. Did Mr. Best, superintendent of the plaintiff, make

that offer to you?

A. I really don't know which one it was. I talked to three different men when I was employed, and I really don't know which one did mention it.

Q. Did you talk to Mr. McNear?

A. No, sir.

Q. What is your regular rate of pay here?

A. I don't quite understand it, and I couldn't hardly tell you.

Q. Is your regular daily rate about \$3.36?

K. Well, it's regular schedule or regular wages.

Q. And on this particular day who else was in the caboose with you?

A. Well, there was the other brakeman, all new men, and I don't remember their names.

517 Q. Do you remember who they are now?

A. No, I don't.

Q. Do you know any of them?

A. No, I couldn't name any of them.

Q. Do you recall a man riding with you in the caboose that day that carried a gun?

A. No.

Q. Do you remember a man back there being a special agent?

A. No, there was two brakemen and one or two riding that was going to another town that had been looking for employment and didn't receive it, and I couldn't really say what they were.

Q. What time did you say you left the yards in East

Peoria that morning?

A. Well, it was 'round about 9 o'clock.

Q. Where were you at 9:30, then?

A. Somewhere between the yards and Hollis.

Q. What brings it to your mind at this time that the date, the incident at Hollis, occurred on December 31?

A. Well, because I was new at the job, and I knew when

I went to work.

Q. What day did you go to work there?

A. I went to work there—Let's see. It was on Monday. I don't particularly remember the date it was; about the 28th when I went to work.

Q. About the 28th?

A. Yes, sir.

Q. How long after you went to work did this incident at Hollis take place?

A. Well, I was in two runs down there on Wednes-518 day and Thursday, and also Friday and Saturday.

Q. Now, did you have any experience on that day while you were going through East Peoria?

A. Have any experience at what?

Q. At anything eventful happening there.

A. Well, no.

Q. The first you noticed was when you got in the

vicinity of Hollis, was it?

A. It was before we got there. It was all the way along the highway; after we left the yards, there was cars driving along the highway, and they would throw rocks and drive a little farther and start throwing rocks again.

Q. You recognized no one who was doing that?

A. No.

Q. How big a train did you have that day,?

A. Several cars.

Q. About how many?

A. Well, I would say ten or fifteen cars.

Q. Were you on the train that day as a student brakeman or regular brakeman?

A. I started as student brakeman.

Q. Do you know who the regular brakeman was that day?

A. No, I don't know him by name.

Q. How long did you stop there at Hollis that day?

A. Well, I would say thirty minutes.

Q. And you were there about thirty minutes?

A. Yes.

Q. And do you know Mr. Carnarius?

A. Well, I know him when I saw him, yes, sir.

Q. And he was riding in the caboose with you as

you went into Hollis, and then he got off and later rode the rest of the way in the cab, is that right?

A. Yes sir.

Mr. Knoblock: That's all. The Court: Is that all?

Redirect Examination by Mr. Heyl.

Q. This bonus you referred to is so much per day for your services working for the railroad?

A. Yes, sir.

Q. And operating a train?

A. Yes, sir.

Q. That's right, isn't it?

A. Yes, sir.

Q. No one offered you anything to come here and testify, did they?

A. No, sir.

Mr. Heyl: That's all.

520 BERT TAYLOR, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Bert Taylor.

Q. And where do you live?

A. Hamilton, Illinois.

Q. How long have you lived there?

A. Around eighteen years. Q. And what is your age?

A. Forty-seven.

Q. What is your business or occupation?

A. Well, fireman.

Q. And have you worked for the T. P. & W. Railroad in the past?

A. Yes, sir.

Q. How many years?

A. Around three years.

Q. And were you fireman on train number 43, extra west, on December 31, 1941?

A .. Yes, sir.

And riding in the engine with the engineer,

Yes, sir. A.

-L. C. Ward?

Yes, sir. A.

Now, will you tell the court in your own way what happened from the time you left the East Peoria yard. until you reached Hamilton, Illinois?

Well, coming out of the yards we got bricked at East Peoria, and then down there just before you

cross the bridge,-

Illinois River bridge?

A: Yes, sir.

All right! Go ahead!

and then we got bricked at Canton and at Hollis.

Now, at Hollis what happened? What did you observe there with reference to persons throwing bricks or stones?

Well, my engineer got hit with a brick. A.

Q. Did you see that?

Well, I never exactly seen it hit him, but he got hurt, anyhow, right there.

Were you present?

Yes, sir.

You mean you didn't actually see the contact, is Q. that if?

A. No, sir.

What did you observe, if anything, on his face! Observe anything on his face?

Well, I don't know as I did. 1

Or his mouth after he got hit?

Not the engineer, I didn't. A.T.

Q. Well, how about the conductor?

A. The conductor got hit.

Q. Did you see that?

·A. Yes, sir.

Q. That was Carnarius, wasn't it?

A. Carnarius, yes, sir,

Q. What did you see happen to him?

A. Well, his lip was bleeding. I suppose he got hit.

Where was he?

He was in the engine.

In the cah?

Yes, sir.

Q. Immediately before you saw his lip bleeding, what happened in the cab?

A. Well, about that time the engineer got hurt.

Q. What was happening? Can you tell what happened? Was there anything coming into the cab?

A. Oh, yes, sir.

Q. Tell us.

A. There were bricks coming in.

Q. What else?

A. That is all I know.

Q. How many?

- A. I should judge there was around fifteen or twenty.
- Q. Did you see the men that were throwing these into the cab of the engine?

A. Well, no, I didn't.

Q. Could you tell where they were coming from?

A. They was coming from the north side of the cab, rght hand side.

Q. And you were on the east side of the cab?

A. Left hand side.

Q. That would be the left hand side, would it?

A. Yes, sir.

Q. Did you observe anything with reference to people traveling on the road that later stopped near your train?

A. Well, there were some cars out there, yes, but I didn't pay much attention because I was down in the cab myself. I got hit myself.

523 Q. Where did you get hit?

A. On the hip.

Q. What struck you?

A. I guess it was a brick.

Q. Then at Glasford did you have any difficulty? .

A: Glasford?

Q. Yes, sir.

A. I believe not.

Q. How about Wheeler crossing? Do you know where the Wheeler crossing is?

A. Wheeler crossing is this side of Glasford, is it?

Q. Yes, beyond Hollis,

A. Yes, sir.

Q. Between Hollis and Mapleton?

A. Yes, sir.

Q. What did you observe there?

A. Well, there was some throwing done there,

Q. Did you notice any automobiles there?

A. No, sir.

Q. Now, you were on the left hand side all the time, were you?

A. Yes, sir.

Q. What happened to the engineer, L. C. Ward, at that crossing?

Mr. Knoblock: I object.

Q. If you remember.

The Court: If he saw it.

Anything happen to him that you saw?

A. Not as I saw, no, sir.

Q. East of the Mapleton water tank do you remember what happened there with reference to the engineer?
 524 A. No. sir.

Q. Did you see the engineer get hit any other time?

Mr. Knoblock: Objection.

The Court: He may answer.

A. I believe not, no, sir.

Q. Now, on your return trip next day did anything happen as you approached East Peoria?

A. Yes, sir. There at the P. & P. U. cross-over we

got bricked there, too.

Mr. Heyl: I think that's all. The Court: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. How long have you lived at Hamilton, Illinois, Mr. Taylor?

A. Around eighteen years.

Q. And you have worked for the T. P. & W. about how long?

A.. I should judge around three years, that is, up to this last time.

Q. When was that other three year period?

GA. '26 to '29.

Q. And when did you go to work for them this last time?

A: The 30th.

Q. 30th of December, 1941?

A. Yes, sir.

Q. And were you also offered a \$10.00 bonus over and above your regular rate of pay during this situation?

A. Yes, sir.

Q. Did Mr. Best offer that to you?

A. Well, now, I don't know as he did, but they 525 were saying over there we was to get \$10.00, that's all.

Q. And on this day in question who was the engi-

neer of t train?

A. Larry Ward.

- Q. And who else was in there besides you and Larry Ward?
- A. There was Larry Ward and myself, and a brakeman or two.
 - Q. Do you know their names?

A. No, I don't.

Q. Who else?

A. And Ernie Lawson.

Q. Who else?

A. There was a guard, but I couldn't tell you his name.

Q. I didn't hear that.

A. There was a guard, but I couldn't tell you his name.

Q. Did he carry a gun? A. I think so, yes, sir.

Mr. Heyl: I object, and ask to have it stricken unless he saw it; no guessing about it.

The Court: Yes, it may be stricken.

Read the question again.

(Question read by reporter:)

The Court: Answer it "yes" or "no."

A. Yes.

Q. There was yourself, Ward, Lawson, two brakemen and a guard and who else?

A. Well, that's all I can remember.

Q. What brings it to your attention that this occasion at Hollis occurred on the 31st of December? How do you place it on that date?

A. Well, I don't quite get that, but it was the 30th 526 we went west, and we came back the next day.

Q. You went west on the 30th of December?

A. Yes, sir.

Q. Well, you say it was the 30th of December, 1941, when Ward was the engineer of the train going west?

A. Yes, sir.

Q. And you were the fireman?

A. Yes, sir.

Q. You couldn't be mistaken about the date, could you?

A. How's that?

Q. You couldn't be mistaken about that date, could you?

A. No, I think not.

Q. Where did you go west on the 30th? Where did you go from and go to?

A. We went from the East Peoria yards to Hamilton.

Q. Then you came east on the 31st, is that right?

A. Yes, sir.

Q. And you came from Hamilton-

A. To the East Peoria yards.

Q. -to the East Peoria yards-

A. Yes, sir.

Q. on the 31st?

A. Yes, sir.

Q. You didn't come back on January 1? Is that right?

A. Well, I wouldn't be right sure about it.

Q. Did you lay over in Hamilton two days? A. It was the following day we came back.

Q. Now, you say that when you came out of the yards, and also at the Illinois River bridge, there were some 527 bricks thrown. You didn't see who threw them, did you?

A. No, sir.

Q. And did you see Larry Ward thumb his nose at some of the men along the highway that day?

A. No, sir, I did not.

Q. Did you hear him yell at one of the men, "How do you like it?"

A. No, sir.

Q. Did you hear him yell to one of the men, "Why don't you come and get me?"

A. No. sir.

Q. Did you do any of that stuff yourself?

A. I did not,

Q. You didn't shake your fist at them, is that right?

A. No, sir, I didn't.

Q. You didn't see anyone else in the cab do that?

A. No, sir.

Q. You didn't have your eyes on Ward all the time, did you?

A. No. sir.

Q. Now, when you got to Hollis, how long did you stay there?

A. At Hollis?

Q. Yes.

A. Well, we wasn't there so very long. I should judge around five minutes, maybe not that long.

Q. And where was Mr. Carparius when you pulled into

Hollis ?

He was in the engine. He was in the engine?

Yes, sir.

You are sure he was not in the caboose, and that 528 he joined you at the engine?

I think not.

Who got out of the cab there at Hollis, if anybody? Q.

I don't think there was a soul got out. A.

None of them got out? Q.

A. No. sir.

Now, it was at Hollis, was it, that you saw the blood on Mr. Carnarius's lip?

A. Yes, sir.

You didn't see it, but Engineer Ward was hit, is that right?

A. Yes, sir.

Whereabouts was the engineer, Ward, hit at Hollis? He was hit in the stomach, I believe. Q.

A.

I see. Now, you say about fifteen or twenty bricks came in there?

A. Yes, sir.

You don't know who threw them? Q.

No, sir, I do not. Α.

You didn't see anybody throw them? Q. :

A. No. sir.

Q. You couldn't recognize anybody?

A. Well, I believe not.

Q: And at Glasford you had no trouble there?

A. Glasford?

Q. Yes.

A. No. sir.

And at Wheeler crossing there was a little throwing there, was there?

A. Yes, sir.

529But no one was hit there, is that right? Q. No, sir.

Then you came back on December 31, you say?

January 1 it probably was instead of the 31st. wouldn't be sure.

Do you know which day it was that you went west?

A. It was on the 30th of December.

Q. And you came back the following day?

A. Yes, sir.

Q. That would be the 31st, is that right?

A. Yes, sir.

Q. And you never had any unusual experience until you got to the P. & P. U. cross-over in East Peoria, is that right?

A. That's right.

Q. Who threw the bricks-

A. I couldn't tell.

Q. You couldn't tell us, and you never saw anybody? You never saw any actual throwing?

A. I saw some fellows, but I couldn't tell you who they

were.

Mr. Knoblock: I see. That's all.

Redirect Examination by Mr. Heyl.

Q. Mr. Taylor, when did you start to work for the railroad this last time?

A. This last time? The 30th of December.

Q. The 30th of December?

A. Yes, sir.

Q. You didn't go out that day, did you!

530 Mr. Knoblock: I object; leading. The Court: He may answer.

Q. Which was the first trip that you made?

A. The 30th of December, I am sure. Q. Was it the last day of December?

Mr. Knoblock: I object.

The Court: Let him answer.

Q. Where were you New Year's Eve?

A. New Year's Eve I was over in the yards there.

Q. Where?

A. The T. P. & W. yards.

Q. You are sure of that, are you?

A. Yes, sir.

Q. How many trips did you make on the road before you made this trip to Hamilton?

A. That was my first trip.

Q. That was your first trip?

A. Yes, sir.

Q. Is that the day you were employed, or the following day?

A. I believe it was the following day.

Q. You were employed December 30, weren't you?

A. Yes, sir.

Q. On Tuesday?

A. Yes, sir.

Mr. Knoblock: I object.

The Court: There isn't much question about when the train left. I didn't think there was much. I thought we were losing time, and that is the only thing I am bothered about.

531 Mr. Heyl: That's all.

The Court: I didn't think there was much question

about when this train left.

Q. You said something about a \$10.00 bonus. Was that a bonus for service in operating the trains? Is that what you were to get paid for?

A. I couldn't tell you about that.

Q. All you heard was some talk over there?

A. That's right.

Q. No official of the company said anything?
A. I never heard any official say anything.

Q. Nothing to you in your presence?

A. No, sir.

Q. All you heard was what the men said in your presence?

A. Yes.

Mr. Knoblock: I object.

The Court: Yes, sustained.

Q. What did you do prior to '29?

A. '291' Everything.

Q. When you worked for the railroad, what did you do?

A. In 1929! Fired.

Mr. Knoblock: I object.

Q. How long did you fire?

A. Around three years.

Mr. Heyl: That's all.

The Court: That's all. Call the next witness.

532 LINDEL DOUGLAS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. Lindel Douglas.

Q. Where do you live?

A. At 202 Arnold, East Peoria.

Q. What is your age?

A. Twenty-eight.

Q. What is your business?

A. Railroad business.

Q. Were you a brakeman on extra 40 east departing from the Peoria yard December 31?

A. Yes, I was.

Q. And where did that train run from and to?

A. It ran from Peoria to Effner.

Q. And were you on extra 40 west the next day coming back, January 1?

A. Yes, sir, I was.

Q. Were there any unusual occurrences on the train going east?

A. There were none going east.

Q. And as you started back toward Peoria from Effner, did you stop at Fairbury?

A. Yes, we did.

Q. Tell what, if anything, occurred at Fairbury.

A. At Fairbury? Q. Yes.

- 533 A. We switched five cars in on the north elevator track for feed loading. After we had switched these cars in, and thrown the switch and thrown the derail to go in and set the cars out, coming out the derail was thrown behind us.
- Q. Where were you located with reference to the cut of cars that was set in by the elevator?

A. We backed in the siding, and I was on the rear end-

Q. Would that be the east end?

A. Yes, sir.

Q. Were you the one that threw the derail off of the rail?

A. I throwed it off going in, yes, sir.

Q. And where were the rest of the crew?

A. Why, they were all riding the tender coming out of the switch.

Q. From the time you moved in there after starting out, were there any members of your crew near this derail?

A. No, there wasn't.

Q. What did you discover with reference to the derail as you started out west from the switch track?

A. We found the detail thrown back on the rail.

Q. Had any member of your crew thrown that derail?

A. No, they hadn't.

- O. Did you see any of the defendants about that time in that vicinity?
 - A. I saw Garland Brown.

Q. Garland F. Brown?

A. Yes, sir.

Q. Where did you see him?

- A. He was about one block west of the station, or one block west of the elevator.
- 534 Q. Was he in any conveyance at that time?
 A. He was in his car crossing the track.

Q. Was there anyone with him?

A. No, sir.

Q. You have known Garland Brown for sometime?

A. Since he started for the railroad.

Q. Well, for how long?

A. For the last two or three years.

- Q. Have you worked for the railroad about that length of time?
 - A. I have worked there for about twelve years.

Q. And you have known him for three years?

A. Yes, sir.

Q. On your way from—As you came out of the track there at Fairbury, did your train continue on west toward Peoria?

A. Yes, we continued on.

Q. What, if anything, occurred between Fairbury and Peorial

A. We had a few stones thrown at us at Washington.

Q. What, if any, effect did the throwing of those stones have upon the engine?

A. It broke glass on both sides at Washington. Q. From which direction were those stones thrown?

L. They were thrown from the depot at Washington.

They weren't thrown from the other side, just from the depot side. That was the left hand side coming in.

Q. Where were you riding?

A. I was riding on the engine on the left hand side.

Q. Then you continued on to Peoria?

A. Yes.

Mr. Elliott: You may cross examine.

535 Cross-Examination by Mr. Knoblock.

Q. Mr. Douglas, you say you are twenty-eight years of age?

A. That's right.

Q. 'And how long have you lived in East Peoria?

A. Oh, since—About two years, two or three years, something like that.

Q. You say you have worked for the railroad twelve years?

A. I started in 1928; July 4, 1928.

Q. And for what road?

A. For the T. P. & W. Railroad.

Q. And you have been with them ever since, is that right?

A. Yes.

Q. Now, prior to, say, January 25, what was your job—1941? What was your job at the railroad?

A. What year?

Q. 1941.

A. 1941, January 25? I was a lead laborer.

Q. Lead laborer, is that right?

A.: Yes.

Q. In what capacity were you acting when you were going on this extra 40 east December 31, 1941?

A. I went out as head brakeman, and came back as rear

brakeman.

Q. You went out as head brakeman, and came in as what?

A. Rear brakeman.

Q. I see. When were you promoted to the brakeman job?

A. On December 29, 1941.

Q. And were you also one of the men who was promised a bonus of \$10.00 a day

A. Yes, sir.

536 Q. —extra over and above your regular rate of pay?

Yes, that's right.

Who offered that to you? Mr. Best?

Mr. Best, and some of the officials I talked to.

What is your regular daily rate over there?

A.

\$7.00? Did you go out as an apprentice or as a full-fledged brakeman?

As a full-fledged brakeman.

Now, on your way to Effner on December 31, you say there was nothing unusual happened, is that right?

That's right.

Q. Who all was on this train?

A. I couldn't tell you alk

Who was your engineer?

Ernie Funk.

Ernie Funk was the engineer?

The Court: Go ahead and name them as fast as you can.

Was he the only one that was engineer on this trip?

Yes, he was. Who else?

The fireman I do not recall (he was out of the engineering department), and Paul Avery was one of the brakemen.

Paul Avery?

Yes, sir, he was pilot (you would call him "pilot"). and then we had another brakeman (I don't know his name), and our conductor was-

Q. Who was the conductor?

537. A. I am trying to think. Most of these fellows were out of the office, and I don't know them so well. The Court: Who else?

A. I don't recall now. I know him real well, but I don't recall his name.

The Court: Go ahead.

Anybody else?

A. I can't recall those other fellows' names. I know them, but right at the minute I can't think of their names.

Q. Did you have any men on that train carrying guns that day?

No, I can't recall of anyone carrying guns there.

Did you have some special agents on the train? Let's see. I imagine we did. I don't believe we have had a train out yet we haven't had special agents on, but

I don't recall how many or who was on there now.

Q. Now, you say you stopped at Fairbury. What time of the day did you stop there?

A. After dinner sometime.

Q. What is your best judgment? A. Oh, I would say 1:30, 2 o'clock.

Q. And tell us where you spotted these cars.

A. At the north elevator. It's west of the depot, and

on the north side of our tracks there.

Q. Were you the one that threw the derail off as you backed into this switch?

A. Yes, I was.

Q. Was anybody back there with you at that time?

A. Our conductor was there.

Q. Who was that?

538 A. Oh, Armstrong was his name.

Q. Are you sure that R. F. McKinney didn't throw,

the derail off as you backed into it?

A. I am pretty sure I threw it. I was watching the road crossing (it was about twenty feet), and I protected that crossing.

Q. R. F. McKinney was on the trip that day?

A. Yes, he was our pilot.

Q. When did you see Garland Brown?

A. Why, when I was protecting the road crossing, he went across it.

Q. He wanted to cross?

A. He went on across as I was there protecting the road crossing.

Q. What kind of a car was he driving that day?

A. No, I couldn't tell you what kind he was driving that day.

Q. Was anybody with him?

A. No.

Q. He was alone?

A. Yes, sir.

Q. You never saw him near that derail?

A. No, I never saw him. We hadn't gone into the switch with our ears yet.

Q. You didn't see Garland Brown do anything that day of a threatening or offensive nature that day?

A. No, sir.

Q. After that derail was thrown, you have no idea who did it?

A. No, sir.

Q. You had seven, eight or nine men on the crew?

A. I think so.

Q. You don't know where all the men were when you were switching?

A. I knew where the switchmen were. The train 539 crew were on the engine, and we were on the ground.

Q. You didn't see them? You thought they were up there?

A. Taking care of their duties.

Q. That is just your assumption?

A. Yes.

Q. You don't know what they were doing, or where they were?

A. I am pretty sure.

Q. That is your assumption, is that right?

A. Yes, sir, that's right.

Q. Now, when you came back, you say you got some rocks at Washington, Illinois, is that right?

A. That's right.

Q. You don't know who threw those?

- A. It was dark when we were going through Washing-
- Q. That was the only place, outside of Fairbury, that you noticed anything that occurred?

A. We had a few rocks thrown at us at Farmdale.

Q. I see. What was your job on this date did you say, again?

A. As a brakeman.

Q. Where did you ride on the train?

A. Going out-Coming back in from Effner, I was the

head brakeman, riding the engine.

Q. I understood you to say on direct examination that on December 31, on extra 40 east, you were the head brakeman, and on extra 40 west on back on January 1 you were the rear brakeman?

A. When I went out, I was—Let's see. You have got me all mixed up. As I went out, I was the head brakeman,

and as I came back I was the rear brakeman.

Q. Where did you ride as rear brakeman?
540 A. As rear brakeman I should have been on the caboose.

Q. Where were you?

A. I was in the engine. I was off of my position. We new men change back and forth, and I happen to know the man working as head brakeman was riding in the caboose at that time:

Q. Who was that man?

A. Hadley, I believe, is his name.

Q. Hadley?

A. Yes.

Q. Now, did you see Garland Brown at Fairbury excepting on this one occasion when he crossed over the tracks?

A. That is the only time I have ever seen him anywhere.

Q. You never saw him stop his car around that way!

A. No, sir.

Q. He was continuing on his way, so far as you know? A. He was going across the crossing when we came out

there.

Q. How far east of the derail did your train back into this switch track?

A. A good block.

Q. That is, from the rear of the train to the derail, or from the engine to the derail?

A. We set our cars about one block from the derail.

Q. The engine would be closer to the derail than you were!

A. Yes, sir.

Q. Because you backed in?

A. Yes, I was with the cars going in.

Q. How far would you say the head of the engine can was from the derail as you spotted those cars?

A. We just went across a crossing to set the cars, 541 so it was about one block even, the engine was.

Q. About one block?

A. Yes. The cars were set just across the crossing.

Q. And the view from where you were to the derail was unobstructed, wasn't it?

. By the cars and engine. I was behind those.

Q. I understand that, but anyone sitting in the engine, there was nothing to obstruct their vision?

A. No, they should have seen anything going on.

Q. It was broad daylight?

A. Yes.

Q. Have you gone out on any other runs outside of this one you have described as December 31 and January 1?

A. I have been running gegular east, yes.

Q. When was the last run that you made east?.

A. I went east on Thursday of this last week.

Q. Anything happen on those occasions?

A. Nothing has happened.

Q. And, as far as you have been able to observe, you have seen no one whom you would identify that has made any threatening gesture or threat of any kind or character toward you?

A. None since I have been working.

Q. Did you—after these runs, did you report these incidents to the police?

A. No. sir.

Q. Did you report it to any public officials or law-enforcement officers?

A. No, sir.

Q. You have never requested the investigation by 542 any law-enforcement officers or by any policeman?

A. No, I have not.

- Q. You haven't asked their aid or assistance in any way?
- A. No, I haven't been off of the T. P. & W. for two weeks.

Q. What?

A. No, I haven't been off of the T. P. & W. for two weeks, so I know I haven't talked to anyone.

Q. The last trip that you went on you said was Thurs-

day of last week?

- A. It took us two days to go to Effner; Thursday and Friday.
- Q. Who was the special agent on your train that day?
 A. I don't know. We had one fellow going out, and a different fellow coming back.

Q. Did you see the guns that they carried?

A. No, sir, I did not.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott.

· Q. Mr. Douglas, I understood you to say you saw Mr. Garland F. Brown before you backed in on this switch?

A. That's right.

Q. Where was he with reference to the street west of .

the depot when you saw him?

A. He crossed the street right next to the derail. The derail is not more than twenty foot from the street crossing.

Q. You saw him before you backed in?

A. That's right.

Q. You threw the derail as you went in?

A. Myself, yes. I was the closest to it.

543 Q. And you came back to the engine after you set the cars, and were on the engine as you came out?

A. Yes, sir.

Q. Is that when you noticed the derail had been put on?

A. The engineer noticed it, yes.

Q. Tell us just how you threw the derail. Tell us what you do.

A. It is a regular hand switch-hand switch. You have

to throw, turn the handle.

Q. And that throw the derailing device off of the rail!

A. That's right.

Q. And in order to put the derailing device back on the rail, some force has to be used?

A. Some force has to be used, yes.

Q. Is that the switch that controls the rails going in, or is it different?

Mr. Knoblock: I object. The Court: Yes, sustained.

Q. Where is this derail with reference to the switch points?

A. Well, it must be a couple of hundred feet from the

switch point.

Q. Is it controlled by the same or a different switch?

A. Different switch.

Q. How much force does it take to throw the derail off or on the rail?

A. About a sixty pound pull.

Q. I understood you to say that you worked last week, and went to Effner and back.

A. That's right.

Q. You had no trouble at all at that time?

A. No trouble.

544 Q. There has been no trouble on any of the runs since a week ago Saturday, is that it?

A. That's right.

Mr. Elliott: That is all.

Recross Examination by Mr. Knoblock.

Q. You say you saw Garland Brown pass near the derail, but he didn't stop, did he?

A. That's right.

Q. You handled the derail after you saw him, didn't you?

A. That's right.

Q. And on this trip do you recall a man in the cab of the engine by the name of Compton?

A. I don't know any of the new men we have out there.

Q. Do you know whether he was the engineer, or whether Ernie Funk was the engineer, on that trip?

A. I couldn't tell you that at all.

- Q. Didn't I understand you to say Ernie Funk was the engineer?
- A. He was on the first trip I made out the 31st. This happened on the 1st of January, this trip when the derail was thrown.
- Q. I understand that, but I am asking you on the way out whether Ernie Funk was the engineer, or whether Compton was the engineer?

A. I couldn't tell you now who was on there.

Q. Did I understand you correctly on direct examination to say Ernie Funk was the engineer going out?

A. He was on the first trip I made on the 31st.

Q: He was the engineer on the first trip?

- A. Yes. He must have been coming back, because he had to be.
- 545 The Court: Anything else with this witness?

Q. Do you know Funk?

A. Very well. I have known him for fifteen years.

Q. Funk was in the cab at Washington, too, wasn't he, coming back?

As He had to be, I guess.

Q. Do you recall him being in there coming back at Washington?

A. I do not recall now who we did have in there.

Q. Do you recall at Washington who was driving the train?

A. It had to be Funk if be went out.

Mr. Heyl: I move it be stricken. The Court: It may be stricken.

Do you know who was driving the train at Washington?

A. We had the regular engineer who was learning.

The Court: I am not asking what you had, but who was
the engineer at Washington driving the engine. Do you
know?

A. I do not know.

The Court: Is that all? That's all.

546 AUGUST E. STONEBOCK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name? A. August E. Stonebock.

Q. What is your official position in Peoria County?

A. Sheriff of Peoria County.

Q. How long have you been sheriff of Peoria County!

A. Three years and one month.

Q. I will ask you if, prior to January 1, 1942, and after December 28, 1941, you received any request from George P. McNear, Jr., the president of the T. P. & W. Railroad,—

A. I did.

Q. —with reference to protecting the railroad and its property in this strike?

A. I did.

Q. What did you tell Mr. McNear?

A. I told him that I would do all I could for him, but that I was limited so far as my personnel was concerned, and I would do as much as I could for him.

Q. What did you say with reference to your protecting

the road?

A. I have a patrol car, and that we would patrol the roads in Peoria County and the vicinity where the pickets and men were stationed.

Q. Were you able to protect the railroad and cope with

the situation?

A. As far as I could. I had a few men to do the

547 job with, and I did as best as I could.

Q. You told him you couldn't protect the railroad and its property in this strike because you had an inadequate force?

A. That's right.

Q. How many deputies do you have, Gus?

A. Six uniformed men.

Q. That is your total force, is it?

A. Yes.

Q. To take care of a county the size of Peoria?

A. That's right.

Q. Is Hollis and the Toledo, Peoria & Western Railroad in Peoria County from Peoria, the City of Peoria, west through Glasford?

A. That's right.

Q. Is Glasford in Peoria County?

A. That's right.

Q. Is Wheeler crossing in Peoria? That is the school-house crossing just west of Hollis.

A. Yes, that's right.

Q. And the Pekin road crossing from Orchard Mines to Pekin, is that right?

A. Yes, sir.

Q. And the Allied Mills?

A. Yes, sir.

Q. And Persimmon Street?

A. That's right.

Q. And Hiram Walker crossing?

A. Yes, sir.

Q. All those crossing and places are in Peoria County?

Q. And that is your jurisdiction?

A. That's right. Mr. Hevl: That's all.

Cross-Examination by Mr. Knoblock.

Q! Sheriff, how many times have you talked to Mr. McNear about this?

A. The one time that he called me on the phone.

Q. What day was that?

A. Well, I don't know exactly. I think along about the 28th, along in there.

Q. 1941, in December?

A. That's right.

Q. Outside of that telephone conversation, did you ever get any other request from McNear?

A. No, sir.

Q. Did you ever get a telegram from him?

A. Yes, sir.

Q. What day did you get the telegram?

A. Before the first of the year. I don't know exactly what day it was.

2. On the situation at Hollis did Mr. McNear ever call

you, and ask you to send any men to Hollis?.

A. On Friday, I think it was, the two men in the office got a call that there was a possibility of some trouble, violence, in the vicinity of Hollis, and that it would be a good idea to send some men down, which I did.

Q. And the only time you were ever called upon by the T. P. & W. Railroad to make any arrests were on

549 the occasion of Frank Lucas and Leo Totten?

Mr. Heyl: I object, just assuming that fact. The sheriff hasn't said he made any arrests

The Court: I don't understand he made any arrest.

Q. Did you take any men into custody?

A. I did not.

Q. You did have Frank Lucas and Leo Totten in your county jail?

Mr. Heyl: I object, because he had nothing to do

with it.

The Court: Is that outside the railroad company?

Mr. Knoblock: No, it is definitely not outside.

The Court: Who issued the warrant?

Mr. Heyl: Our own special agent took him to the City Hall.

Mr. Knoblock: You will find out that isn't true.

Mr. Heyl: Go ahead!

Mr. Knoblock: Read your own affidavits.

The Court: Is there an allegation in the complaint with regard to these two men?

Mr. Knoblock: Yes, sir, and it is not what, Mr. Heyl

says it is, either.

The Court: We will find out. Read the question.

(Question read by reporter.)

The Court: The objection will be sustained to that.

Q. Every time that you have been called upon by Mr. McNear to send men to any particular point, you have done so, haven't you?

My. Heyl: I object to that as assuming.

The Court: He may answer.

Mr. Heyl: Find out what was done. That is too 550 general.

The Court: He may answer.

A. Do you have reference to the arrests now?

Q. On any occasion your office has been called upon by Mr. McNear to perform some service in protecting his road, you have done so?

A. That's right.

Q. You have never failed or refused to respond to any call from him?

Mr. Heyl: I object; too general; asking for a conclusion.

Q. With reference to any disturbances concerning this strike?

The Court: He may answer.

A. I have, yes, sir.

Q. And your force, with reference to any disturbance concerning this strike, has never proved to be inadequate, has it?

Mr. Heyl: I object as a conclusion. The facts show

Mr. Knoblock: We object to that statement.

The Court: That statement may be stricken, but the objection will be sustained.

Q. You have had men available and have sent them to preserve peace and order every time that you received a request from the T. P. & W. to do so during the period of this strike?

Mr. Heyl: A object to that as too indefinite, and asking for a conclusion.

The Court: He may answer.

A. I had a call at one time, and we responded.

Q. And there has never been an occasion since this strike started that you have ever received a request 551 from Mr. McNear or his company which you have been unable to respond to?

Mr. Heyl: I object as asking for a conclusion, and too

indefinite.

The Court: I think he answered that; objection sustained.

Mr. Knoblock: Excuse me a moment, Your Honor. I would like to find that allegation.

Q. You have never at any time, have you, Sheriff,—Mr. Heyl: I would like to have you point out to the court the statement that the affidavit contains that statement.

Mr. Knoblock: Contains what statement?

Mr. Heyl: That we made the statement the sheriff made this arrest.

Mr. Knoblock: You made the statement that I said the affidavit disproved. That is what I had reference to.

(Question read by reporter:)

Q. —received a complaint from Mr. McNear that you were not cooperating with him, and that you were not responding to his calls—

Mr. Heyl: I object.

Q. —during this strike?

The Court: Objection sustained. This witness testified he was called on once, and answered the call. What is the use of going into this? Is that correct, Mr. Sheriff?

A. That is correct.

The Court: Objection sustained

or the T. P. & W. to proceed to the Wheeler crossing because of trouble?

Mr. Heyl: I object to that.

The Court: I think he may answer.

A. We patrolled the entire road. That took in Wheeler

crossing.

Q. Did you ever get a complaint from Mr. McNear of the T. P. & W. that there was trouble at the Cedar Street viaduct or Cedar Street crossing at Peoria?

A. "He told us to patrol all along the road. It was my understanding we had started, and we have started in at

Cedar and took in the whole territory.

Q. That took in the territory of the Allied Mills, too. didn't it?

A. That's right.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. You had a call that morning of January 2 from Mr. Best of the T. P. & W. Railroad?

A. That's right.

Q. And he told you there was going to be trouble on the west end, meaning from Peoria toward Canton?

A. That's right.

Q. And you sent two men, didn't you?

A. That's right.

Q. They didn't get there until it was all over, did they?

A. They got a call on the radio that there had been a shooting below the Allied Mills, and they went on down...

In the meantime, I think it was Mr. Kipling had gotten 553 these two men in Peoria. They called the city police.

The city police were called to assist, and they made the arrest.

Q. Your men were not present at any place along this T. P. & W. Railroad parallel to this road at any time that morning, were they, when the train was there and the strikers were there?

Hadn't gotten there.

They hadn't gotten there!

A. No.

They did nothing along the road with reference to the strikers this morning?

Mr. Knoblock: I object to the form.

The Court: I think he answered. He said they weren't there.

That is the only time they patrolled the road, isn't it, Gus, that morning?

We patrol the roads all the time.

You mean in Peoria County?

A. Yes.

You have six men to do the patrolling?

Two men on every eight hours. We have six men.

When you say "patrolling," you mean, don't you, patrolling all the roads in Peoria County?

Yes, sir, that's right.

How many miles of road are there in Peoria County!

Α. I can't answer that exactly.

Several hundred miles?

That's right.

Mr. Heyl: That's all.

554 Recross Examination by Mr. Knoblock.

Q. Your office never received a call from Mr. Best until after the shooting had occurred, is that right?

Mr. Heyl: I object as assuming.

The Court: If he knows.

Do you know when this shooting occurred? Maybe we can get at it this way: What time in the morning did

you receive notice there was likely to be trouble on this particular road?

A. Between 9 and 9:30.

The Court: And you don't know when the shooting occurred?

A. Not exactly, no.

The Court: Go ahead!

Q. As soon as you had received that call from Mr. Best, you promptly sent your men out there?

A. That's right.

Q. The two men that you say Kipling apprehended: here in Peoria, they were not the men charged with the shooting?

A. That I do not know.

Q. You don't know?

A. No.

Mr. Knoblock: That's all.

The Court: I think we will take a recess for a few moments.

(Recess.)

555 GEORGE HANLEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. George Hanley.

Q. Where do you live, Mr. Hanley?

A. I am living at the T.P. & W. at the present time.

Q. What is your business?

A. Rear end brakéman.

Q. Were you rear brakeman on extra 40 west, which departed at about 8 A. M. from Effner on January 1?

A. Yes, sir.

Q. Where did you ride?

A, I was riding on the rear end, in the caboose.

Q. And when you got b Fairbury, was there any switching done?

A. Yes, sir.

Q. Tell us what was done.

A. When we got to Fairbury, I was on the rear end, brakeman. There happened to be two brakemen on the front end at that time, Mr. Armstrong, who was conductor at that time, and Bob McKinney. I was on the rear end, taking care of the rear end of the train, and I knew nothing about what happened. All I knew was they did some switching out there. And when the train started up after we connected up the train, the conductor came back and told me someone had thrown a derail.

Mr. Knoblock: I object.

The Court: Yes, that may be stricken.

556 A. What were you doing with reference to this derail?

- A. I was on the rear end, and knew nothing about the derail.
 - Q. How far east of where the derail was?

A. Where I was?

Q. Yes.

, A. I was east of the derail about two thousand feet.

Q. Were you anywhere near the derail?

A. No, sir.

Q. And you know nothing with reference to that?

A. No, sir.

Q. You had nothing whatever to do with the throwing of the derail one way or the other?

A. No. sir.

Q. After you left Fairbury, you proceeded on west toward Peoria, did you?

A. That's right.

Q. What, if anything, occurred when you got to Cruger?

Q. What, n A. Yes, sir. Q. Tell us.

A. I didn't stop at Cruger, went right on through Cruger. I was in the left bay window of the caboose, and just as we went by the station at Cruger I turned my head to the left and saw four men west of the depot. Just as I turned my head, they raised their arms, and all four of them threw stones.

Q. What did you do?

A. I ducked. I fell to the floor and turned my head to see where the conductor was, and he was still writing away.

Q. What effect did it have upon the bay window?

A. It didn't have any effect on the bay window.

557 I had opened the inside window (and it broke the outside window) to keep it from being broken just before we got to Cruger, and I saved that window by opening it, and when a stone came in through the left window I jumped on the floor face first and looked to see where Jake Armstrong was, and he was working at the table making out his reports. Just as I turned my head to look where he was, one came through the right window.

Q. Was his table over on the right hand side?

A. No, sir, he was sitting right behind me at his table, behind my seat.

Q. What effect did this stone that came through the

right window have?

A. It broke both of them on that side.

Q. Those cabooses have double windows?

A. Yes, sir, on the floor, on the windshield.

Q. When you proceeded on from Cruger, you came to Washington next?

A. Yes, sir.

Q. What, if anything, occurred there?

A. We had a special agent on the rear of the train at that time. We had a special agent on the rear of the train at that time, and just before we got to Washington he made the whole rear end crew get up in the front of the caboose by the front door, so Jake Armstrong and myself, we got up on the front end. It was getting tiresome, and we sat on the floor. When we went through Washington, someone threw some stones, but it had no effect except to hit the caboose.

Q. You recognized none of these men?

A. . No, sir.

Q. When you proceeded west, you reached Farm-dale?

558° A. Yes, sir.

Q. What occurred at Farmdale?

A. One stone hit the caboose at Farmdale.

Q. Then what did you do?

A. Proceeded on to Peoria.

Q. How long have you worked for the T. P. & W.

As Since December 31.

Q. What was your business prior to that time?

A. I was a rodeo rider.

Mr. Elliott: That's all. Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. You say you are living now at the T. P. & W. yards in East Peoria?

A. That's right.

Q. How long have you lived there?

A. Since the first day of employment.
Q. That was on December 30, 1941?

- A. No, sir, it was the second day. I started staying there the 31st.
- Q. And when did—How long have you lived in Peoria or East Peoria?

A. This is my home town.

Q. When you were a rodeo rider, did you make Peoria your home town?

A. No, sir, I was all over the United States.

Q. How long were you engaged in that occupation?

A. About twelve years. Of course, I was a truck driver for quite a while during the winter time.

Q. Are you one of the men that has been offered 559 a bonus of \$10.00 a day over and above your regular day rate?

A. No one offered it to me, but I heard it was going to be paid. I have asked no question about the—it what-soever.

Q. On December 31 you went east on extra 40, is that right?

A. December 31.

Q. December 31 you were on extra 40, is that right?

A. Extra 40 east. Q. Extra 40 east?

A. Yes, sir.

Q. And you were in the position of a brakeman on that day?

A. That's right.

Q. Were you a full-fledged brakeman or apprentice brakeman?

A. Well, I have had about three months previous is all.

Q. Where is that?

A. Southern Pacific, Tucson, Arizona.

Q. What year?

A. That has been 1936.

Q. What rate of pay were you paid? What is your

regular rate of pay you have been offered, not including your bonus?

A. Now?

Q. Yes.

A. \$7.00 a day, I believe it is; \$7.00 and some odd cents, I believe it is.

Q. Who else was on this train as you left Peoria here

on December 31?

A. Mr. Compton was our engineer. There was a new man firing; I didn't know his name. Jake Armstrong was the conductor. Lindel Douglas was rear end brakeman. I can't say that he was rear end brakeman, but he was a

brakeman, and Bob McKinney was braking, and my-560 self. We had two clerks from the office on the train.

Q. You have mentioned a special agent. Did you observe him carrying a gun?

A. Yes, sir, I saw a pistol.

Q. Do you know what calibre it was?

A. Yes, sir, it was a 38.

Q. Who was that man? His name?

A. Blanchard, L. Blanchard.

Q. L. Blanchard?

A. Yes, sir.

Q. Where is he from?

A. Well, sir, I think he's from Chicago.

Q. Do you know who employed him?

A. No, sir.

Q. Do you know whether or not he had ever worked for the T. P. & W. prior to the strike?

A. No, sir, I don't.

Q. Nothing happened as you went east on this extra 40, is that right?

A. Nothing at all. Nothing happened going east or all the way back until we got to Cruger that I know of.

Q. Was there a man on this extra 40 east by the name

of Ernie Funk?

A. I couldn't swear to that. I don't know. I believe we had two engineers at that time, but I couldn't say who they were, outside of Mr. Compton.

Q. Do you recall a Mr. Walker on this train?

A. Mr. Walker?

Q. Yes.

561 A. There are two Walkers.

Q. Were there two Walkers on this particular train?

A. I can't recall that.

Q. You can't recall there was anybody by the name of Walker?

A. I can't recall whether there was or not. That was my first trip at that time, and I knew no one except the brakeman and the conductor and one engineer.

Q. What time did you leave Effner, Indiana, on extra-

40 west?

A. On extra 40 west we left at 8 o'clock January 1, New Year's morning.

Q. And where were you located on that train at that

time?

A. I was rear end brakeman.

Q. Did you remain in the rear end all the way to Peoria?

A. No, I came forward two or three times to help with

the switching.

Q. Did you ever ride in the front end at any time while you were going through the country?

A. No, sir, I didn't.

Q. Isn't it a fact that at one time you and Lindel Doug-

las changed positions?

A. I believe we did once or twice. I don't quite remember whether we did, but I think we did at one time. That would have put me on the engine at one time. I was rear end brakeman and, if I was up there, it wasn't for very far.

Q. When you got to Fairbury, what time of the day

was that?

A. That's something I can't recall. Q. What is your best judgment?

A. I would say somewhere-

Q. What?

562 A. I would say somewhere around 1 or 2 o'clock, maybe noon.

Q. How long did you stay there at Fairbury?

A. We weren't in Fairbury over three-quarters of an hour at the most.

Q. And how far is it from Fairbury to Peoria?

A. Fairbury to Peoria is—I don't know what that is. It's about fifty-eight or sixty miles.

Q. What time did you arrive in Peoria that day?

A. We arrived in Peoria at 5:40.

Q. 5:40 in the evening?

A. That's right.

When you came through Farmdale, it was dark at that time, was it not?

Yes, sir. A.

Q. You say one stone was thrown!

A. We felt something hit the side of the caboose.

Q.

That's right; once. A.

Q. You have no idea who threw that?

A.

And you did not see it thrown?

No, sir. A.

At Washington there was just one stone thrown Q. also, or one object that hit the caboose, is that right?

Yes, sir, that's right.

And you don't know who threw that?

. A. No.

Q. Now, at Fairbury you know nothing concerning the derail whatsoever?

A. No, sir. I was on the rear end of the train at 563 that time.

You don't even know whether the derail was thrown back on other than what you have been told, is that right?

A. Yes, sir.

Were you in the caboose all the time at Fairbury?

No, sir, I was behind the caboose on the track.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott.

Q. Did some of the other members of the crew stay back at the rear end of the train with you while the other members of the crew were doing the switching up in front?

A. None of the crew; just the special agent.

Just the special agent?

Yes.

Mr. Elliott: That's all.

Recross Examination by Mr. Knoblock,

Q. Do you know which member of the crew handled the derail at Fairbury?

A. No, sir, I couldn't tell you.

Mr. Knoblock: That's all.

The Court: Call the next witness.

Mr. Heyl: I would like to call Frank W. Lucas. The plaintiff is calling this witness as an adverse witness, and one of the defendants, for the purpose of cross examination as provided by the rules.

564 The Court: You may interrogate.

FRANK W. LUCAS, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to

Cross-Examination by Mr. Heyl.

Q. What is your name?

A. Frank W. Lucas.

Q. And where do you live? A. 1233 Main Street, Peoria.

Q. What is your business or occupation?

A. Brakeman.

Q. And formerly employed by the Toledo, Peoria & Western Railroad?

A. Yes, sir.

Q. And are you one of the defendants in this case?

A. Yes.

Q. And you are one of the defendants out on strike?

A. That's right.

Q. And do you belong to one of the Brotherhoods?

A. B. of R. T., yes, sir.

Q. On January 2, 1942, I will ask you whose automobile you were riding in when you were on the road paralleling the T. P. & W.'s right-of-way west of Peoria.

A. Jack Totten.

Q. Who was that?

A. Jack, or Leo, Totten.

Q. When did you get into his automobile?

565 A. Union Station.

Q. Who else was in his automobile?

A. Nobody.

Q. Where did you go from the Union Station?

A. We went to Hollis.

Q. Did you stop at Hollis?

A. No, we turned around there is all.

Q. And Sturned around and met the train near the Allied Mills crossing, didn't you?

A. No, we never met it at Allied Mills,

Q. Below the Allied Mills? About two thousand feet west?

A. No, farther than that; about three-quarters of a mile south.

Q. And you and Mr. Totten stopped there?

A. That's right.

Q. And you got out of the car?

A. That's right.

Q. And he remained in the car, and had the car remain running?

A. Yes, sir.

Q. Were there any other people there at that time?

A. I saw cars in both directions, but I don't know who

they were.

Q. Did they stop there?

A. They were behind us. They slowed down.

Q. Do you know who they were? .

A. No.

Q. Did you recognize any person along the railroad?

A. I recognized Kipling meeting us. Q. Did you recognize anybody else?

A. No, I didn't.

Q. Any former employees of the railroad that you recognized?

566 A. No, sir.

Q. Why did you stop on the road at that place?

A. To see who was running that engine.

Q. Were there any other persons around there?

A. I never saw anybody on the ground. There were some cars. I couldn't tell you who they were.

Q. Cars back of you?

A. That's right.

Q. Did they go down to Hollis and turn around?

A. I couldn't tell you that.

Q. Did they stop back of you?

A. I couldn't tell you that, even. Q. Where did you stop this car?

A. Right on the shoulder.

Q. On the shoulder?

A. Yes.

Q. Did you get out of the car?

A. I did.

Q. Where did you stop? A. At the door of the car.

Q. Where did you get the bottle you used to throw benzine in this engine?

A. I never had any bottle.

Q. Isn't it a fact you are the man who threw the bottle of benzine in the engine?

A. I am the man that's accused.

Q. Are you the man that did it?

. I did not.

Q. And you immediately jumped in the car!

567 A. I jumped in the car when I saw Kipling getting his sawed-off shotgun out.

Q. And you came back to Peoria?

A. Yes.

Q. And you were arrested where? At the corner of Adams and Western?

A. No, sir, we were stopped there.

Q. "We were stopped there"!

A. We stopped in the traffic, and Kipling drove alongside of us.

Q. And he stopped you?

A. Yes.

Q. And you remained there until he secured the services of the Peoria police to take you to the City Hall, is that right?

A. That's right.

Q. Where were you the day before?

A. The day before I was on picket duty some place.

Q. Were you with Totten?

A. I can't recall that I was, no.

Q. Who were you with?

A. I don't exactly know now who I was with.

Q. You knew all the men on the picket line, didn't you?

A. That's right.

Q. Will you name the men whom you saw on the picket line?

A. On what day?

Q. The day before this occurred; on January 1.

A. I couldn't name any of them. I don't even know where I was at.

Q. Were you on the picket line?

A. I was either at the viadues or the lane, one. Q. The viaduct in East Peoria?

The viaduct in East Peoria?

A. That's right.

568 Q. How long were you on the picket line that day?

A. Whatever the shift called for. We had two hour shifts, four hour shifts, some six hour shifts.

Q. You were there part of that day?

A. That's right.

Q. Where were you on the picket line on December 31, Wednesday?

A. I don't know. We have a record of that, but I

don't have it.

Q. Who has the record?

A. Chairman.

Q. Who is the chairman?

A. Joe Burkhalter.
O. Is he in court?

A. No, he isn't.

Q. Where is he?

A. At the Jefferson Hotel.

Q. Is he one of the former employees of this railroad?

A. Yes, sir.

Q. Does he live at the Jefferson Hotel?

A. 'No, he doesn't.

Q. You have seen the record in his possession?

A. Yes.

Q. What is his full name?

A. J. W. Burkhalter.

Q. What is it?

A. Joseph W. Burkhalter.

Q. He is the chairman of your Brotherhood?

A. That's right.

Q. Does that record show where every man was on picket duty?

A. Yes, we have several records there that show where

we were at.

Q. Is that the headquarters of the Brotherhood?
A., That is our meeting place.

Q. What place in the Jefferson Hotel?

A. Room 238.

Q. Whose room is that?

A. I couldn't say.

Q. Is that F. W. Coyle's room?

A. No.

Q. Keiser's room?

A. No.

Q. Who has charge of that room?

A. The B. of R. T.

Is that the room where directions were given relating to this strike?

A. No, it wasn't.

Where were they given? Q.

I don't know. A.

Who gave you instructions with reference to what Q. you were to do in this strike?

Our chairman. A.

Who is that? Q.

Newdigate D. G. Newdigate, and C. S. Gabbert. A.

- C. S. Gabbert is one of the officials of the Brotherhood?
 - A. Vice-chairman.

Q. Vice-chairman? A. That's right.

And Delmar Newdigate-is that his name? Q.

Yes, he is chairman.

Q. Chairman of your Brotherhood?

570 A. That's right.

And these men gave instructions to you and the other men as to what should be done?

A. We were told there was a strike called at 6 P. M. on the 28th and we were assigned pickets. That is all the instructions I had.

Q. Did they tell you to assign pickets?

A. No.

Q. Who assigned the pickets?

The chairman of the meeting, whoever it was at that A. time.

You followed the instructions of one of these officers, did you,-

That's right. A.

—in whatever was done? Q.

A. That's right.

Q: Who sent you to Hollis on January 2?

A. Nobody.

Q. How did you happen to go down there?

To see who was on this engine. A.

Q. On what engine?

On this particular engine going out that way. A.

Q. And you left the Union Station?

A. That's right.

Q. A. Did you see the train at the Union Station?

We couldn't get a chance to look at it there; no.

Q. You saw it at the Hiram Walker crossing, didn't you?

A. No, we wasn't in there.

Q. And you saw it down at the Iowa Junction crossing?
A. No, we wasn't in there.

71 Q. Did you stop any place along the road after you left the Union Station until you got to Hollis?

A. No.

Q. Were there any other cars along there?

A. We met several cars, but I don't know who they were.

Q. I am talking about cars that traveled along the road.

A. What do you mean, "traveled"?

Q. From the Union Station on west.

A. I said we met cars, but I don't know who they were.

Q. I am asking about cars following you, or immediately ahead of you.

A. There were no cars with us.

Q. Do you know Arthur Brewster?

A. I do.

Q. Did you see him that day?

A. I never saw him down there.

Q. Where did you see him? A. I can't recall seeing him.

Q. Did you see Walter McMullen?

A. No.

Q. Did you see H. J. Dilley?

A. No.

Q: Did you see George Kneisley?

A. I saw him at a meeting later on, when we had the meeting in the afternoon.

Q. Did you see him at any time between the Union Station and Hollis?

A. No.

Q. Did you see W. A. Evans?

A. No.

372 Q. Did you see Walter Kohtz?

A. No.

Q. Did you see any of these men whose names I have asked you present there when this bottle was thrown?

No, I didn't see any of them to recognize them.

Q. Were there any of these men I have asked you about at the place where you and Totten stopped to see who was on this engine?

A. I couldn't recognize them. There was three or four cars.

Q. Did you see any of them?

A. I didn't see them to recognize them.

Q. Were there any of these men I have mentioned there near where you and Totten stopped to see who was on the engine?

A. No.

Q. They weren't around?

A. I don't know whether they were or not. There were some cars behind us.

Q. Did you recognize any of the cars?

A. No.

Q. Who was the first car?

A. The first car was Kipling. He was probably one car length in front of us.

Q. He wasn't west! He was east!

A. He was coming south, meeting us. We were going north.

Q. You were going toward Peoria?

A. That's right.

Q. And he was coming from Peoria?

A. That's right.

Q. And he turned around before he reached your car, didn't he?

A. No.

573 Q. Where did he turn around?

A. I don't know.

Q. He was right back of you?

A I don't know that, even.

- Q. How fast did you drive from that point to Peoria?
- A. Oh, I don't know; possibly thirty-five or forty.
 Q. You did not go beyond that speed any place?

A. No.

Q. Outside of Mr. Kipling's car, whose car was near to your car when you and Totten stopped?

A: I didn't recognize any of the cars.

Q. Were the other cars— How close were they to you?

A. Oh, I don't know just how close they were.

Q. Two or three blocks?

A. Two or three cars right behind us.

Q. What's that?

A. There was two or three cars right behind us.

Q. How close was the first car to you?

A. Oh, possibly a car length.

Q. Were they on the shoulder, too!

A. They were on the pavement.

2. They were traveling?

A. That's right.

Q. And none of these cars stopped,-

A. No.

. -is that right?

A. I didn't see them stop, no.

Q. Did they stop!

A. I couldn't say to that.

574 Q. Were any of the men from these cars out on the ground or pavement or right-of-way of this railroad while you were standing there?

A. No.

- Q. All the cars you saw moved on the pavement on up toward Peoria?
- A. They were behind us. I don't know where they went.

Q. You were stopped?

- A. Just about stopped is all.
- Q. You got out on the shoulder?

A. That's right.

Q. And you got out of the car, and Totten remained at the wheel?

A. That's right.

Q. , Where did you go?

A. Stood right at the door, one hand on the door.

Q. One hand on the door?

A. Yes.

Q. And one foot on the footboard?

A. No, I had both feet on the ground.

- Q. Where was the engine with reference to you at that time?
 - A. Right straight-just right straight across from us.

Q. Right across, and about twenty feet from you?

A. I don't know how far it/was. Q. What is your best judgment?

A. Oh, I would say probably thirty or forty feet, something like that.

Q. And the engine is lower than the road at that point, isn't it?

A. Yes, you can look right down in the vab.

Q. You can look right down in the cab, can't you!

A. That's right.

575 Q. Were there any cars to your—to the north of you! I mean across the road. Assuming that road runs east and west, were there any cars on the other side of the road going south?

A. You mean meeting us?

Q. Yes.

A. Yes, there were two or three behind Kipling, but I couldn't tell who they were.

2. They went on?

A. I guess they did after he got out of the way.

Q. You didn't see any men standing around there; did you!

A. No.

Q. Now, how soon after the engine reached you and was straight across from you did you get back into the car?

A. Oh, as soon as I could look at the engineer.

Q. Did you recognize the engineer?

- A. I never saw him before, no. I didn't know who he was.
 - Q. Did you recognize anybody on the engine?

A. 'No.

Q. Didn't recognize anyone running the engine?

A. That's right.

2. How fast was the engine traveling?

A. Oh, he was going possibly twenty-five miles an

Q. Did he stop?

A. I don't know whether he stopped or not.

Q. You didn't wait to see?

A. He hadn't stopped when I was there.

Q. Did you wait to see?

A. No.

Q. You got out immediately!

576 A. As soon as I saw Kipling drive up, we got in the car and left.

Q. Had you any difficulty with Kipling before that?

A. I did.

Q. What trouble did you have?

A. He got sore because I joined the B. of R. T., for one thing.

Q. In connection with this strike?

A. No.

Q. You didn't have any trouble?

A. No. There was a grudge. He had forbidden me to speak to him, said, "Don't get around me."

Q. You saw him come down there and, because you saw

him, you turned away?

A. No, he was getting his sawed-off shot gun. He was practically stopped, and brought the gun to the window.

Q. Did you see the gun?

A. Yes.

Q. And he was stopped?

A.. Right directly in front of us.

Q. He turned around behind you, didn't he?

A. I don't know where he turned around.

Q. As far as you know, did he turn?

A. Yes, he come up to us in Peoria. Q. Was his car in front of you?

A. No.

Q. Where was it?

A. It was sitting at an angle to us.

Q. Right in front of you?

A. No, on his side of the pavement.

Q. You were on the river side of the pavement, weren't you?

577 A. We were on the right side. Q. Going north?

A. That's right.

Q. And he was on the other side going south?

A. That's right.

Q. Did he stop his car?

A. As far as I could tell, he stopped.

Q. How long did he stop?

A. I don't know.

Q. He stopped long enough to see you throw that bottle?

A. I don't know when he stopped.

Q. Did you see anybody else throw a bottle at the train?

A. I never saw any bottle thrown.

Q. Did you see any bricks thrown?

A. I didn't see anybody.

. Q. There wasn't anybody to throw them?

A. I saw cars.

Q. There was no one standing there?

A. No.

Q. No one gathered there?

A. That's right.

Q. And none of your men up and down the road either direction?

A. Not that I could recognize.

Q. Did you see anybody on the road walking?

A. Nobody walking.

Q. Nobody walking in either direction from where you were, is that right?

A. That's right.

Q. Where did you and Totten go after you gave bond at the City Hall?

578 A. Where did we go? I went to the Oriental and ate dinner.

Q. Did you stop any place before you got to the Oriental?

A. No.

Q. Did Totten go with you?

A. Totten went to the Oriental, called his wife up, and went from there directly home.

Q. Was there anybody with you when you went to the

Oriental?

A. John W. Totten, Jack's brother.

Q. Was he with you in the car that morning?

A. No.

Q. Were there any passengers in that car except you and Totten?

A. No.

Q. None of the men that were in the cars back of you were on the running board or standing beside the cars, were they?

A. No.

Q. If there were men in the cars, you couldn't see them, is that right?

A. That's right.

Q. How many cars, now, in the line back of you?

A. I couldn't say exactly. There was three or four.

Q. Three or four?

A. As far as I could see.

Q. And the first one was how close to you?

A. Possibly a car length behind us.

Q. And the last one?

A. Back of him.

Q. How far?

A. Just right up behind him.

Q. There was these cars in a line, and no one outside of the cars?

579 A. That's right.

Q. Were there any cars toward Peoria on either side of the road from you?

A. Yes, on the right side of the pavement.

Q. Whose car was that?

A. I couldn't tell you who it was.

Q. Was it moving?

A. Right behind Kipling. Q. They were moving on?

A. When Kipling stopped, they stopped behind him.

Q. Did they go around Kipling?

A. Not while I was there.

Q. Was Kipling still stopped when you started your.

A. He was stopped when we got in the car and left, yes.

Q. Were the motors running in the other cars back of you?

A. I couldn't say to that.

Q. You couldn't even hear that?

A. No.

Q. It was a cold day that day, wasn't it?

A. It was.

Q. How cold was it?

A. I couldn't say just how cold it was.

Q. So the only man that you recognized any place around that vicinity was Kipling?

A. That's right.

Q. I want to ask you once more: Did you recognize anyone that was in that engine?

A. No.

Q. Do you know Funk?

- 580 A. I know Funk, but he wasn't sitting in the engine at that time.
 - Q. Do you know whether he was in the engine?

A. I couldn't say.

Q. How many men did you see?

A. I only saw one. Q. Where was he?

A. In the engineer's seat.

Q. Was the window up or down?

A. The window was open. Q. Are you sure of that?

A. Yes.

Q. It was knocked out up the road?

A. I can't say.

Q. Were you there when it was knocked out?

Mr. Knoblock: I object.

The Court: Yes, objection sustained.

Mr. Heyl: I think that's all.

Redirect Examination by Mr. Knoblock.

Q. What is your age, Frank?

A. Thirty-five.

Q. You say you live here at 1233 Main Street, Peoria?

A. That's right.

. How long have you lived in Peoria?

Mr. Heyl: I want to object as not proper. This witness cannot be cross examined by his counsel.

Mr. Knoblock: I am not cross examining.

581 Mr. Heyl: He can only ask questions provided by the rule.

The Court: That is right.

I think he may answer how long he has lived here.

A. I have lived in Peoria and East Peoria five years. Q. How long have you been employed by the T. P. & W.?

A. Five years.

2. When did you become a member of the B. of R. T.?

A. Oh, last April, I believe.

Q. They interrogated you or questioned you about January 2, 1942, at a time when you were riding with Jack Totten.

A. Yes.

Q. Is that the same man as John Totten?

A. No.

Q. Are they any relation?

A. Brothers.

Q. Now, Jack Totten, is that the same man as Leo Totten who is one of the defendants in this case?

A. Yes.

Q. Where did you meet Jack Totten that day?

A. Jack Totten at the Union Station.
Q. And whose automobile did you go in?

A. Leaving the Union Station?

Q. Yes.

A. Jack's.

O. What direction did von travel?

A. We traveled down Washington Street south.

Q. Go ahead and tell us whatever road you took to get out to Hollis, or wherever you turned around.

582 A. We traveled Washington to Adams, Adams down to Route 24 through Bartonville to Hollis.

Q. With reference to the place where Totten and you stopped your car and Kipling stopped you, where was that?

A. That was just a little south of the Elm Grove Tavern.

Q. When you got back to Péoria?

A. That was in Peoria on Adams Street just below Western.

Q. What caused the stopping of your car?

A. Well, we heard a car honking insistently, and we got up in the traffic, and this car drove alongside of us and kept honking, and we stopped and here came Kipling with his sawed-off shotgun.

Q. What was the condition of the windows in the auto-

mobile that day?

A. We were frosted.

Q. Were they frosted to such an extent that your vision was blocked to the side or rear?

A. Out to the side and rear, yes:

Q. When Kipling stopped his car, tell what happened.

A. When Kipling stopped his car, he came running around like a mad man.

Q. Whta did he do?

A. He pulled a sawed-off shotgun and said, "Say your prayers. I want to kill you right here."

2. What was he doing with the sawed-off shotgun at

that time?

A. He had his finger on the trigger and his thumb at the safety catch, pointing right at me, right in my face.

Q. You say he had one finger on the safety catch. What

was he doing there?

A. Working it back and forth.

Q. How many times did he tell you he was going to kill you that day?

83 . A. About twenty-five or thirty times.

Q. Did he do anything with reference to Jack Totten?

A. He said, "You did that, Jack, yourself." He said, "You got in the mess yourself. I will just kill you both right here."

Q. What was he doing during this twenty-five or thirty

times he was telling you he was going to kill you?

A. He was calling us all the vile names he could think of. Mr. Heyl: I move that be stricken as a conclusion.

Mr. Knoblock: Do you want the names?

The Court: Let's move along. If you are going to use this in defense, I am going to confine you to what you have used today. I am not asking you to tell this story twice.

Mr. Heyl: I want to object to this examination as not within the rule. All they can ask is his explanation of what was said.

The Court: I take it this is an attempt to do that. He is now stating what happened in the arrest, and I think he is not limited, that he may do that.

Mr. Knoblock: If I understand the court, that I will be limited to that theory, I don't think I want to go ahead

at this time.

The Court: I don't want to hear this twice, but I will permit you to go ahead if you want to but I don't want to sit here by the week and listen to this story over.

Mr. Knoblock: Rather than be limited later, I would

prefer not to proceed.

The Court: I am not asking you to cross examine 584 him, but you can see where we get. Suppose they call every witness, and spend the rest of three or four weeks on that, and you have a right to recall those people, we never would get through with this case. I don't want to limit either one of you on a record you are entitled to, and I have tried to go along as carefully as I could so that either of you won't get your record in a shape where you say the trial judge prejudiced your rights, but I am

Mr. Knoblock: I am not complaining, and now that I understand your position I don't think I care to interro-

gate this witness further.

The Court: (To witness.) That is all. You may be excused.

(Discussion off the record.)

The Court: Examine; gentlemen!

not going to listen three or four times.

- 585 HAROLD E. KIPLING, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to Direct Examination by Mr. Heyl:
 - Q. What is your name?

A. Harold E. Kipling. Q. Where do you live?

A. East Peoria. Springfield Hill, East Peoria.

Q. How long have you lived in Tazewell County?

A. About three years.

Q. Where did you live before that?

A. I lived in Bushnell, Illinois.

Q. How long did you live in Bushnell?

A. About fourteen years.

Q. What is your business or occupation?

- A. I am chief special agent at the Toledo, Peoria & Western Railroad.
 - Q. How long have you been chief special agent?

A. Two years.

- Q. Prior to that, what was your business or occupa-
- A. I was a special agent, employed in the yards of the Toledo, Peoria & Western Railroad.

Q. How long have you worked for the T. P. &. W.?

A. Five years.

Q. Before that, what was your business?

- A. I was an ice cream maker, commercial ice cream maker.
 - Q. At Bushnell?

A. Yes, sir.

586 Q. I will ask you to refer to January 2, 1942, and state when you first observed the train west on that day, on the T. P. & W.

A. Extra west started out of the yards about 7:30 that

morning.

Q. Where were you when it was started?

A. I was in the yards. Q. What did you do?

A. I came out of the yards and started west with it. I went to the viaduct on the east end of our yards in East Peoria to see if there was anyone there. There had been some rocks thrown off on the engine there at that point, but there wasn't anyone there that day.

Q. What did you find?

A. I followed the train on west. I came over the viaduct, didn't find anyone there, so I came on west, and the next stop I made along the train was what we call "Jap Davis crossing", which is Washington Street.

Q. East Washington?

- A. East Washington, yes, sir. Q. Did anything happen there?
- A. I observed a little truck drive up just as the engine passed, and three men were in the truck. Two of them got out and cursed the engineer and made signs at him.

Q. Did you recognize the three men?

A. I recognized two of them.

Q. Who were they?

A: Walter and Delbert Kohtz.

Q. K-h-o-t-z?

A. K-o-h-t-z, I believe.

. Were they former employees of the railroad?

587 A. Yes.

Q. Do you know whose truck it was?

A. No, I don't.

Q. What did you do?

A. I went on west with the train down Route 150, I believe it is.

Q. Did you see the train at the station, Union Station?

A. I went on west. I didn't come back into the Union Station.

Q. Where did you see the train after it left the Union Station the first time or place you saw it?

A. At the first place was Edmund Street that goes into Hiram Walker's.

Q. Is that known as the "Hiram Walker crossing"?

A. Yes, sir.

Q. What did you see there?

A. Well, I was sitting and waiting there for the train to come by (it hadn't gotten there yet), and a car pulled in behind me that had two men in it.

Q. Who was it?

A. John Gimming and Arthur Brewster.

Q. Are those men in the court room?

A. I see Brewster.

Q. Is John J. Gimming in the court room?

Mr. Knoblock: Pick him out.

Mr. Gimming: Right here (rising).

Mr. Heyl: Stand up, will you, please? (Persons named rise.)

Q. Those are the two men, are they?

A. Yes.

The Court: Don't waste time, gentlemen. He knows 588 these fellows, he has been there a long time, and if he swears to it—

Q. Did you have any conversation with these two men!

A. Yes. Gimming drove up beside my car. I had my windows open. He had his windows open. He said, "You are not coming back off the west end. We are going to get you, and get all the rest of them, and we have the stuff to do it with."

Q. What did you say?

A. I didn't say anything. The train had pulled out, and I went on west with the train.

Q. Then what?

A. The next stop I made was at what we call "Iowa Junction". That is where we set out the M. & St. L. I pulled across the viaduct.

Q. What happened there?

A. This car pulled in behind me, and another one, too, pulled in toward the train.

Q. Was there anyone in the car behind you?

A. John Gimming and Arthur Brewster.

Q. Same two men?

A. Same two men.

Q. Who was in the other car, if you know?

A. I seen one man—or two men—that I knew: Delmar Newdigate and Walter McMullen.

Q. Are they defendants in this case?

A. Yes, sir.

Q. Did you see George Kneisley?

A. The first time I seen him was at Allied Mills.

Q. Was he with either of these two men?

A. He wasn't in the car. I couldn't see through the 589 car because the windows were frosted, and there were only two men I seen that got out.

Q. Were there other men in that car?

A. Yes, sir.

Q. You are unable to identify them?

A. Leouldn't identify them because of the frosted windows.

Q. Did you go on, then, beyond Iowa Junction?

- A. Yes, I pulled on down a little ways farther where the power company has a little plant there. I pulled across from that, and they were sitting at the M. & St. L., and I watched.
 - Q. This trainf

A. Yes, the train.

Did anything happen there!

A. Gimming and Brewster pulled in behind me, and . there were two cars on down the road farther.

Q. Standing there?

A. Standing there talking. They had the doors open, and they were talking. I don't know who was there at that time, so Gimming and Brewster pulled away from me and went down and were conversing with those people. I don't know who was in the car at that time.

Q. Then where did you go?

A. Followed the train on down, started through Bartonville, and I seen the cars were beginning to collect, three
at that time, so I decided to go back up to the police station and call someone, but the police was not there. The
station was open, and I called our president, Mr. McNear,
and said, "It looks like we are going to have some trouble.
You had better get hold of some police, city policy, county
police, looks like it might be at Hollis."

590 Q. Did you try to find help at Bartonville?

1. I went up to the station for that purpose.

Q. There were no police there?

A. No, sir.

Q. Did you see any police or highway police on the road that day?

A. No, sir.

Q. At any time?

- A. Not until I picked up two men, stopped two men.
- Q. What time was it you put that call in to McNear?

A. Approximately pretty close to 8 o'clock.

Q. In the morning?

A. Yes; maybe a little after.

Q. Where was the train at that time?

A. They were going on west.

- Q. When did you see the train after you left Barton-ville?
- A. Directly across from the Allied Mills there is a track we set out feed cars on, and that is what we call the

"61 track." I pulled opposite the Allied Mills, and sat there in my car.

Q. Did they set out any cars there?

A. Yes, I think they set out ten cars. They set out quite a few cars.

Q. Did anything happen there?

A. Yes, sir.

Q. What?

A. George Kneisley came running up the road with a club in his hand, waving it, and Brewster and Gimming pulled in behind me in the car, and Gimming went across the road toward the tracks. Newdigate pulled up in his car (he had a car load of men), and Gimming pointed to one of my men, a guard on the train, which was on the

right-of-way—this man was on the right-of-way—and 591 he said to Brewster, who had his car open right behind

me, "I said cover that man, he has a gun, cover him," and he went across the road, and they were trying to agitate, get these men—

Mr. Knoblock: I object. Q. Tell what was done.

A. They went across the road and waved their clubs at these two men, the two trainmen, the conductor and the brakeman that were setting out the cars.

Q. Where were they with reference to the property?

Whose property were they on? How far did they get?

A. They got on the shoulder of the hard road next to the right-of-way.

Q. They didn't go on the right-of-way?

A. No, sir..

Q. What happened after that?

A. There wasn't any violence of any kind there, just a lot of noise and waving of clubs.

Mr. Knoblock: I didn't get that.

Q. Waving of clubs?

A. Yes.

Q. Go ahead!

A. Then the engine got on the rest of the train, pumped up their air, and started to advance westward and, as we advanced, I was riding slowly along with the train and, as I got down about, oh, I should say a hundred and fifty to two hundred yards, I saw a big mob collected?

Mr. Knoblock: I object.

The Court: State what you saw.

A. I saw a big crowd of men.

592 Q. Of what?

A. Of men and cars.

Q. Where were they?

A. They were on the right hand side of the hard road going west.

Q. How far were they west of the Allied Mills plant?

A. I would say from three to five hundred yards.

Q. And how close were they to the railroad right-of-

A. They were standing right on the left hand shoulder of the road going west, which is right close to the rightof-way and the tracks, a little up over it.

Q. Did you recognize any of these men as you drove

up?

A. Yes, I drove up within about thirty feet of the men, and I recognized a lot of men.

Q. Tell us who you recognized.

A. The first man I recognized was Frank Lucas. He had a bottle in his hand.

Q. What kind of a bottle was it?

A. Whiskey bottle.

Q. Was it empty, or appeared to have something in it?

A. It appeared to have something in it.

Q. What kind of substance?

Mr. Knoblock: I object.

The Court: Liquid?

A. It looked like liquid. He threw the bottle at the cab and it went inside, and, the minute it hit the engine, flames flew up and enveloped the engine.

Q. Where was Lucas when he threw this bottle?

A. Right on the shoulder of the hard road, next to the right-of-way and track going west.

93. Q. And where was the automobile that he afterwards rode in?

A. The automobile was headed back toward Peoria and a little to this side of Lucas, just a little bit this side of Lucas on the hard road, and running.

Q. Toward town?

A. Yes, sir.

Q. Was that the first car that you recognized?

A. Yes, sir.

Q. And the first man that you recognized?

A. Yes, sir.

Q. What did you do? Where were you when you saw him throw that bottle?

A. I was just getting out of my car, just stepping out

of my car.

Q. Where was it?

A. On the right hand shoulder going west.

Q. How far from that car?

A. About twenty feet, I should say.

Q. Which way?

A. To the east?

Q. To the east?

- A. Back toward town; back toward Peoria.
- Q. Where was the locomotive at that time?

A. It was about forty feet ahead of me.

Q. Going which direction?

A. Going west.

Q. How fast was it moving?

A. Not very fast; very slow.
Q. What would you say in miles per hour?
A. I would say five miles per hour.

594 Q. Now, where was this mob or crowd of men!
Mr. Knoblock: Wait a minute! I object.

A. This crowd were lined up all along the hard road. They was throwing rocks. I seen them throwing rocks.

Q. Where were they with reference to this car of Totten's?

A. Back.

Q. West?

A. Farther west, probably twenty or thirty feet. They were scattered out along behind him.

Q. How many men were there?

A. I would say thirty or forty.

Q. Did you recognize any of them?

A. Yes.

Q. Which ones did you recognize?

A. I recognized George Kneisley, Walter Kohtz, Walter McMullen, William Evans, Frank W. Lucas, Leo Totten. I recognized that many.

Q. Did you recognize the others as being former em-

ployees of the railroad?

A. Everybody I recognized was former employees of the Toledo, Peoria & Western Railroad.

Q. Did you notice any strangers among them?

A. No, I didn't. The only stranger, I would say, was Walter Kohtz. He wasn't working for the company at the time.

Q. He hadn't worked for the company for sometime?

A. I imagine a year or so.

Q. When you saw this bottle thrown, what did you do?

A. When Lucas threw the bottle, he beat his legs like this (illustrating by slapping knees with hands) and 595 laughed, and then he turned and ran for the car.

Totten was already in the car. Totten was in the car first. He was standing at the car. He got, Lucas got in behind him, and they started toward Peoria. It was icy.

Mr. Knoblock: I didn't get that first.

(Answer read by reporter.)

A. It was icy that morning on the shoulder of the road, and I swung my car right around, swung easy on the ice, and took after them, gave chase.

Q. Let's go back a minute. How far was Lucas from

this car when he threw the bottle?

A. About, I should say, ten or fifteen feet.

Q. Where was Totten at that time?

A. Totten was standing close to the car.

Q. The car was running?

A. Yes.

Q: The door was open?

A. Yes.

Q. Did you see any other bottles thrown there?

A. I didn't see any other ones thrown, no.

Q. Did you observe what happened in the locomotive when this bottle hit the locomotive?

A. The moment it hit the locomotive, flames come up all around the engineer.

Q. You say that, did you?

A. Yes, sir.

Q. And you turned your car and started after them?

A. Yes.

Q. Will you tell the court just how they proceeded

396 from that point on toward Peoria?

A. They proceeded awful fast. I was right after them all the time, never out of their sight. I got in right behind their car about half way through Bartonville. I was pulling out, keeping to the left, so I could keep an eye on the car. I caught them just as they went into Adams Street.

Q. Just a minute, Mr. Kipling! Did you-How fast

did you travel in following them?

A. I expect—I never noticed the speedometer, but I was going as fast as I could, and it was around seventy-five miles an hour.

Q. Was that the speed they drove?

A. Yes, sir.

Q. And you kept right after them?

A. Yes, sir.

Q. Where did you stop them?

A. Just south of Western Avenue where it crosses Adams.

Q. Just tell the court what happened there, and how

you stopped them.

A. They slowed up just a little. I pulled up alongside their car, had my window open, and I had my gun up, and I said, "Stop," and they pulled over and stopped.

Q. Then what?

A. I got out and a bystander was standing there and saw it, and I said, "Will-you call the police for me?" and he did.

Q. What did you do?

A. Waited there until the police came and got them.

Q. Did you threaten to shoot them?

A. No, sir.

- 597 Q. Did you ever threaten to shoot at them? A. No, sir.
 - Q. Did you point a gun at them?

A. Only when I stopped them.

Q. Show how, then.

A. I had the wheel in my left hand, and I just put the gun in the right window and said, "Stop," and they pulled over and stopped. Did you get out of your car!

A. Yes.

Q. Where did you stand?

A. In front of the car.

Q. Did you keep your gun pointed at them?

A. No.

Q. And tell them twenty-five times that you were going to shoot them?

A. No.

Q. Did you tell them at all you were going to?

A. No.

Q. Did you curse them?

A. No.

Q. Did they say anything to you?

A. They were talking inside the car. I couldn't hear what they were saying.

Q: Were the windows up in the car?

A. Yes, sir.

Q. They stayed there?

A. Yes, sir.

Q. When the police arrived, what happened?

A. They took them in custody and up to the City Hall.
Q. And you went up and swore out a warrant?

598 A. Yes, sir.

Q. After that, what did you do? After you had them arrested at the City Hall, where did you go?

A. I went back out to see what damage was done to the train. I caught up with the train at Canton.

Q. Canton, Illinois?

A. Yes, sir.

Q. Did you examine the train there!

A. Yes.

Q. What did you find?

A. The engineer had been burned around the eyes and scorched, and his eyeballs scorched, and a place burned in the engineer's seat, and a glass on one of the gauges was broken, and the windows broken out of the cab.

Q. Did you at that time gather up anything in the

cab of the locomotive?

A. Yes.

Q. What did you gather up!

A. I gathered up the parts of the whiskey bottle.

Q. How many whiskey bottle parts?

A. I only found one, but they said,—

Mr. Knoblock: I object.

Q. You can't tell what was said. Did you get possession of that!

A. Yes, sir.

Q. Did you go beyond Canton with that train that day!

A. No, sir.

Q. Did you see anyone else on the train that was injured, or had that man been removed?

A. He had been removed.

599 Mr. Knoblock: I object to that.

The Court: You found nobody else injured?

A. The engineer burned.

The Court: Was there anybody else injured? That is what he asked you.

A. I didn't see them, no.

Q. What was the engineer's name?

A. Mr. Gulick.

Q. Did you observe, when you examined that locomotive at Canton, any odor in the cab of the engine?

A. Yes, it smelled—

Mr. Knoblock: Objection.

A. It smelled—

Mr. Knoblock: I object.

The Court: He has answered. Objection overruled.

Q. What did you observe?

A. I smelled either gasoline or benzine. Mr. Knoblock: I move it be stricken.

The Court: Do you know the smell of gasoline and benzine!

A. Yes, sir.

The Court: Have you had experience with it?

A. I have driven a car, I think, a great number of years. The Court: Is that a customary thing to have about an engine! Gasoline or benzine!

A. It is used for fuel.

The Court: Is this one of the engines-

A. I mean automobile.

Q. He is talking about an engine.

600 A. No, cosl.

The Court Is it used for lubrication, or otherwise, or starter, or anything of that kind?

A. No, sir, not on our road.

The Court: His answer may stand.

Q. I don't know whether I asked you: Did you go beyond Canton that day?

A. No.

Q. You came back to Peoria?

A. Yes, sir.

Q. I want to ask you with reference to December 31, 1941. At 7:30 A. M. on the lane leading from the hard road to the yards of the T. P. & W. in East Peoria, were you there?

A. Yes, sir.

Q. Who was with you?

A. Nobody; alone.

Q. Will you tell what happened at that time?

A. Do you want me to start at the beginning?

Q. Start at the beginning.

A. I was home, hadn't gone to work yet. One of my men called me.

Mr. Knoblock: I object.

Q. Did he ask you to go some place?

A. He asked me to come to the yard, they were stopping "rep" track men.

Q. You can't tell the conversation. Did you, in re-

sponse to that request, go some place?

A. I went to the yards. Q. How did you go!

A. I went in my car.

601 Q. That would be on the hard road east of East Peoria?

A. Yes, sir.

Q. Tell what happened.

A. As I entered the lane—it was awful icy that morning. I couldn't hardly stop. There was a line of men clear across the lane.

Q. How many?

A. I would say ten men across the lane. I tried to stop, and had a pretty hard job of stopping because it was iey. As I got stopped, I rolled down the window and said, "You oughtn't to stop men going to the "rep' track, had you?" and Jerry Underwood spoke up and said, "We will stop hem, and stop you, too." I said, "I have a right to come in and out of this lane whenever I deem it necessary." He said, "If you get out of the car, I'll beat your head off with the lantern." He had an electric lantern. I got up, but he didn't.

Q. You followed up his invitation, did you?

A. : Yes, sir.

Mr Knoblock: I didn't get it. (Question read by reporter.)

Q. Did you observe what the men had?

A. Several had clubs. Q. Describe the clubs.

A. There was a brake club, and one like the leg of a table (looked like elm or walnut)—a great big table—

Q. Where did they have those clubs?

A. Had them in their hands.

Q. What did they do?

A. Held them in their hands, and gathered around me.

602 Q. With the clubs?

A. Yes.

Q. What else was said?

A. Nothing else was said. I got out and said, "Beat me if you are going to", but they didn't beat me.

Q. Did you have any weapon at that time?

A. No, sir.

Q. I want to go back to the incident on the 2nd day of January. When you came back to this car of Totten's you have described, did you get out of that car with a sawed off shotgun in your hand?

A. Yes, sir.

Q. When you got out of the car? .

A. When I got out of the car.

Q. And walked over toward the car? I am talking about the time when Totten's car was down at the place on the road.

A. No. I just got out of my car.

Q. Did you have a sawed-off shotgun in your hand?

A. No.

Q. Did you reach for it?

A. No, sir.

Q. Or make any threats to those fellows?

A. No, sir.

Q. The only time you had the sawed-off shotgun is when you made the arrest, is it?

A. Yes, sir.

Q. Are you a deputy sheriff?

A. Yes, sir.

Q. Were you at that time?

603 A. Special deputy sheriff, yes, sir.

Q. Now, are you acquainted with Zeno Merrill?

A. Yes, sir.

Q. And were you present on December 31, 1941, when he had some difficulty?

A. I was called to that lane right after the difficulty.

Q. Tell us about, that.

A. I ran up. One of my men came down to the office where I was doing some work. He says, "They are beating—".

Mr. Knoblock: I object.

The Court: State what you saw.

Q. What was reported to you? That they were having some trouble?

A. At the head of the lane.

Q. Did you go there!

A. I did. I ran up there.

Q. What did you find when you got there?

A. I found about twenty men. Some of them had hold of Zeno Merrill dragging him toward the car, pushing him and partly dragging him toward the car he started from company property in.

Q. You saw him start?

A. Yes.

Q. You found that car at the lane?

A. Yes.

Q. Is that the car they were trying to get him in?

A. Yes.

- Q. What did you observe with reference to his condition?
- A. I walked around to the right side of the car which was headed toward East Peoria, and 1 said, "Are you hurt?" and he was groaning and moaning, and he said.

"Yes, they have hurt me."

604 Q. Were they there at that time?

A. Yes.

Q. Did you see any defendants when you asked if he was hurt?

A. Yes, sir.

Q. Tell who you saw there.

A. I saw Ed Causey, Walter McMullen, Walter Kohtz, Walter McMullen,—

Mr. Knoblock: You named him once.

A. Walter Kohtz and Walter McMullen. Mr. Heyl: We give him good measure!

The Court: Go ahead!

A. That is all I could identify at that time.

Q. Were there other men there?

A. Yes, there were more men than that there.

Q. Where were these men when they had hold of Zeno Merrill?

A. On the hard road, state road.

Q. What else happened! How far were they from the lane when you saw them first!

A. Oh, about thirty feet toward East Peoria, up on the shoulder.

Q. What else did you do in connection with that transaction?

A. Merrill was in the car. I told the driver to take him back to the yards, and I started to come back. They swarmed around me: Walter McMullen said, "You s. b., you are next. We are going to get you."

Q. What did you say!

A. "I don't think you will."
Q. Did they do anything more!
A. Came toward me with clubs.

Q. Who were the men that came toward you?

605 A. The ones I have mentioned.

Q. The ones you have described here?

A. Yes.

- Q. Were those the same ones that had hold of Zeno Merrill!
 - A. Yes.

Q. What else happened in connection with that?

A. When they all started toward me with clubs, I pulled out my gun and said, "I don't think you are going to stop me."

Q. You took your gun out?

A. Yes.

Q. That settled it?

A. Yes.

Q. Did you use it?

A. I have never used a gun.

Q. Where were you! A. On state property.

Q. Where were you then?

A. I was on the lane going back toward company property.

Q. Did they do anything more?

A. No.

Q. What did they have in their hands when they made this threat?

A. Clubs.

?. The same clubs you have described?

A. Yes.

Q. How often did you see these men with clubs, or similar clubs?

A. Every day.

Q. Beginning what day?

A. Beginning the 29th of December.

Q. Until this restraining order was issued?

606 A. Yes, sir.

Q. Did you have any trouble since then? Since the restraining order?

A. I haven't had any trouble, no.

Q. Have you observed any trouble?

A. Only one item, yes.

Q. What was that?

A. I was called—I went to the junction of what we call the "P. & P. U. junction" where the P. & P. U. yards—where our trains go in their yards and theirs come in our yards, and found there had been kerosene thrown on the floor, all around on the floor, and there was charred paper there, and I asked the man in charge, switchtender in charge,—

Mr. Knoblock: I object.

The Court: State what you saw.

Q. When was this, Kip?

A. I don't know the exact date.

Q. Was it this last week?

A. It was after the restraining order.

Q. Where is this house you have talked about!
A. It's just east of Main Street in East Peoria.

Q. And what is that used for?

A. That's for switching, where we line switches to go into the "hump" yard, P. & P. U.

Q. Did you report that to anyone?

A. Yes, sir.

Q. Who did you report it to? A. U. S. Marshal Robert Grant.

Q. What papers were strewn around there?

607 A. Charred paper that had been lighted or ignited.

What kind of paper?

A. That was charred so bad I couldn't tell; probably newspapers.

Q. What else did you observe?

A. This is a pretty hard floor, I think an oak floor, and one part was charred pretty bad, but it didn't get started.

Q. Who called that to your attention?

A. The man that came on duty at 6 o'clock.

Q. In the morning?

A. Yes.

Q. Did you investigate it with anybody?

A. I was down at the junction the same time Mr. Grant was there.

Q. He was there at the time?

A. Yes.

Q. The United States Marshal?

A. Yes, sir.

Q. Did you observe the other picket lines during this trike, in addition to the one that was maintained at the lane leading to the property.

A. Yes. I was down at the west end of the vards

several times.

Q. What did you observe there?

A. Same thing; men there with clubs and rocks.

Q. Did you find any rocks in any cars at any time?

A. No, sir.

Q. Did you make an examination of any of them?

. No, I didn't have any business doing that.

Q. What did you see the men carrying, in addition to clubs, on these picket lines?

A. I seen them carrying clubs, and seen one man

608 at various times piling up rocks.

Q. Who were they?

A. Arthur Brewster, David White. Mr. Knoblock: I didn't get that.

A. White, W-h-i-t-e.

Q. Where did you see that?

- A. At one time I seen both of them, David White and Arthur Brewster, piling up rocks at the head end of the lane.
 - Q. That goes down to the yards?

A. Onto the highway 42, I believe it is.

Q. That goes to Washington?

A. Yes, goes to Washington.

Q. 24, isn't it?

A. 24, yes.

Q. What else did you see with reference to rocks?

A. And another time I was at the west end of the yards I seen Arthur Brewster piling up rocks there.

Q. Where is the west end of the yards?

A. Just west of the viaduct where 150 crosses over the track.

Q. Is that near the Lake Eric crossing?

A. Yes, sir.

Q. How many in the pile he had gotten together?

A. I imagine about forty or fifty rocks. Q. What were the size of these rocks?

Q. What were the size of these rocks?

A. About the size of my fist, and smaller.

Q. What else did you see in that regard?

A. That's all.

Q. What-Did you see any of the other picket lines?

A. I didn't notice any of the picket lines.

609 Q. What about the freight house?

. There wasn't very many there.

Mr. Heyl: Cross examine.

Cross-Examination by Mr. Knoblock.

Q. Now, Kipling, you mentioned here at the end you saw Arthur Brewster and David White piling up rocks at the end of the lane going to the roundhouse, is that right? Head of the lane going to the roundhouse?

A. Yes, sir. .

Q. You never heard of any report at any time since the beginning of this strike of the throwing of a single rock at the head of that lane, have you?

A. No. I haven't.

Q. And you say again that you saw Arthur Brewster piling up some at the west end of the yards?

A. Yes, sir.

Q. You never saw him throw a single rock, did you?

A. No, I never.

Q. Now, you said that they were carrying clubs at the head of the lane, and you named, I believe, McMullen and some other gentleman as doing that. You never saw them take a swing or strike anybody with a club at the head of the lane, nor did you hear of any complaint with reference to that?

A. Yes, sir.

Q. Which one?

A. Mr. Phil Owen. He had the rear glass of his car broken out.

Q. Mr. Owen was on the witness stand, and didn't recall that.

610 Mr. Heyl: I object.

Mr. Knoblock: I withdraw that.

Q. You only know what Mr. Owen told you?

A. Yes, sir.

Q. You weren't there?

A. No, sir.

Q. With reference to the evening of December 31, 1941, do you know who took Zeno Merrill out of the yards that night?

A. Yes, sir.

Q. Who?

A. Herschel Thompson.

Q. Do you know what time they left the yards that evening?

A. I would say between 6:30 and 7 o'clock.

Q. And where were you when they left?

A. I was at my office.

Q. And that is located there at the roundhouse?

A. That's located just inside—just on our property,

just inside; about thirty feet inside our property.

Q. The fact of the matter is, when you came back there that night, Zeno Merrill had already been taken away?

A. No, he had not.

Q. When you came up there that night, you were waving your gun hundreds of feet down the lane?

A. That is not true.

Q. And when you got up there, you said, "You s. b. s., I will take you on one at a time"?

A. No, sir.

Q. And one said, "What is the reason? Have you only got a single shot"?

611 A. No, sir.

Q. Isn't that what you said?

A. No, sir.

Q. When they asked you if you had a single shot, you turned around and went back to the roundhouse?

A. 'No, sir. I went back to the roundhouse, but they

didn't ask me if I had a single shot.

Q. You don't know what went on at the end of the lane until you got the call?

A. That is right.

Mr. Heyl: It is self-evident,

Mr. Knoblock: He might have been standing there watching it.

Q. Who called you?

A. Herschel Thompson.

Q. How did he get in touch with you?

A. Came running down to the office.

Q. And Herschel Thompson left this place at the head of the lane, and ran down to your office, and how far was that from the head of the lane?

A. Approximately fifty yards, maybe a little farther.

Q. Isn't it about two blocks from where you were to

A. I never measured it, but I say fifty to seventy-five yards.

Q. And when you got down there, the only men you saw

and recognized, as I understand it, was Ed Causey, Mc-Mullen and Walter Kohtz?

A. No, more men than that.

Q. Those are the only ones you recognized?
A. I gave you more men than those.

612 Q. Maybe you did. Who were they?

A. I recognized Walter Kohtz, Jerry Underwood,-

Q. Jerry Underwood? I have that.

A. - and Walter McMullen-

Q. I have that. And--

A. —and Ed Causey.

Q. I have that.

A. I don't know just how many more there was now.

Q. You don't recall seeing any more men than that?

A. Yes.

Q. You recognized them?

A. I don't know how many I could recognize or name.

Q. You say you never pulled your gun at all until they threatened you?

A. That is absolute facts.

Q. That is the truth, is that right?

A. That is the truth,

Q. And you talked to Zeno Merrill down there at the head of the lane that night, is that right?

A. After he had been attacked?

Q. Yes.

A. Yes, sir, I talked to him.

Q. You say someone was dragging him toward the car?

A. Pushing and dragging. Q. Who was doing that?

A. I can only identify one man.

Q. Who is that?

A. Ed Causey.

Q. Ed Causey wasn't pushing or dragging, but assisting him?

613 A. No.

Q. He was pushing or dragging him, is that right?

A. Yes.

Q. What time did you leave the head of the lane there that night?

A. To go home?

Q. What?

A. What do you mean?

Q. When you left the vicinity of the head of the lane that night.

A. To go home?

Q. I don't know where you went.

A. I went back to the yards.

Q. What time was that?

A. Between 7 and 7:30, right after it happened.

Q. Now, with reference to December 30, 1941, at 7:30 A. M., were you alone at the time?

A. Yes, sir.

Q. Did these pickets at the head of the lane ever stop you there?

A. Every time I went in, they tried to stop me.

Q. How did they try to stop you? A. By forming a line across the lane.

Q. By simply walking in front of your car, or something like that?

A. Yes, sir.

Q. They never drew a club or threw a rock?

- A. Yes, Jerry Underwood said he would beat my head off.
- Q. I am coming to that, but no other time were you molested?

A. Just stopped.

Q. By having men walk in front of your car?

A. Yes.

Q. You say Jerry Underwood told you to get out, 614 and he would beat your head off, is that right?

A. Yes.

Q. How large a man is Jerry Underwood?

A. Oh, I would say a hundred and fifty-five to sixty pounds.

Q. About how tall?

A. Five feet seven or eight.

Q. How tall are you? A: Five feet eleven.

Q. How much do you weigh?

A. Two hundred and twenty-five pounds.

Q. And you got out of the car-

A. Yes, sir.

Q. -on that occasion?

A. Yes, sir.

Q. He didn't do anything?

A. No, sir.

Q. Did you pull your gun that time?

A. No, sir.

Q. Not that time?

A. No, sir.
Q. Why not?
A. Because it was lying in the car beside me, and I don't want to use a gun.

I see. Who else was there with Jerry Underwood at that time? You said there was ten or twelve men there.

A. I could name part of them.

All right, give us some of them.

Jerry Underwood.

I got that. Q. Walter McMullen. A.

All right.

Clarence Blackburn.

Q. Blackburn ?

A. Yes, sir. Howard Codlin.

Howard what?

Codlin.

C-o-d-l-i-n?

A. Yes, sir. Those are four I could identify that stood right around me.

When you got in your car on that occasion, you went back to the yards, is that right?

Went on to the yards, yes, sir.

What date was it that McMullen said to you, "You are next," and "I said, 'I don't think you will," " or something like that, and started toward you with a club, and you pulled a gun? When did that occur?

That was the night that Merrill got beat up on.

And McMullen went after you?

A. McMullen made the threat, and all of them started from around me.

You pulled your gun?

Yes, sir. I am not going to be mobbed.

Mr. Knoblock: I move to strike the latter part.

Mr. Heyl: That is a good answer.

The Court: It may be stricken, the latter part only.

What time of the evening did McMullen come toward you and say that?"

A. Between 7 and 7:30.

You name Walter Kohtz as being on the picket line that night?

A. Yes, sir.

You know of your own knowledge he hasn't been an employee of the T. P. & W. for sometime, don't you!

A. He was on the picket line, or had a club or table leg at this time.

The Court: Answer his question.
(Question read by reporter.)

A. Yes, sir.

Q. You and Frank Lucas, are you friendly?

A. As far as I know.

Q. Now have never that any falling out or hard feeling toward Frank Lucas!

A. No. sir.

Q. He used to be under you; is that right?

A. Yes, sir.

Q. How long was he under you? A. About a year and a half.

Q. You never had any hard feeling toward John Gimming?

A. No, sir.

Q. You never made any threat toward Frank Lucas prior to the time of this strike?

A. No, sir.

Q. And you never said anything like that to John Gimming?

A. No.

Q. And you and Gimming have been good friends?

A. Yes, sir.

Q. How long have you known Gimming, and been his good friend?

A. Ever since I have been in the company's employ.

Q. And when Frank Lucas changed jobs and took another job other than being one of your assistants, there was no falling out at that time?

A. No, sir.

Q. You have never made any threat at any time you are going to get Frank Lucas!

A. No, sir.

Q. There is no desire on your part to pick on him, or to be angry at him in any way, is there?

A. No, sir.

'Q. As far as you know, he didn't have any reason to be angry at you?

A. No, sir.

Q. And that same thing is true of John Gimming?

A. Yes, sir.

Q. Now, on the day of January 2, 1942, what time did this train leave the yards at East Peoria?

A. Approximately 7:30 A. M.

- Q. What was the name of the train? What was it called?
 - A. Extra west.
 - Q. Do you know the number!

A. No, I don't.

Q. Do you know who the engineer was?

A. Yes, sir.

Q. There were some armed guards on the train that day, weren't there?

A. Yes, sir.

- Q. What were their names?
- A. There was Harold Kane.
- Q. Where is he from?
 618 A. Bushnell, Illinois.
 - Q. That is your former home?

A. Yes, sir,

Q. Where was the other armed guards from?

A. C. E. James.

- Q. Where was he from?
- A. Bushnell, Illinois.

Q. Anybody else!

- A. Stephen Burbage.
- Q. Where is he from? A. Peoria, Illinois.
- Q. And who else?

A. Ray Cook.

- Q. . Where is he from?
- A. Macomb, Illinois.

Q. And who else?

- A. Raymond Wheeler.
- Q. Where is he from?

A. Canton, Illinois. Q. And who else?

- A. Honeycutt. I don't know his first name.
- Q. Where is he from?
- A. Canton, Illinois.
- Q. And who else?
- A. Harold Kratz.
- Q. Where is he from?
- A. Peoria, Illinois.
- Q. Who else?
 - A. A fellow by the name of Blanchard.
- 619 Q. Where was he from?
 - A. Chicago, Illinois.

Who bired him?

I did. .

- Q. From whom did you hire him!
- A. He called me long distance. Q. And offered his services?

A. Yes, sir.

Q. A. Had you known him before?

No. sir.

- Q. Who else was on that train? I mean special agents.
- A. That's all that were on that train that I can-Q. Do you know a man from Chicago by the name of Goldby †

A. Yes, sir.

How long have you known him? Q.

A. Not very long.

Q. When did you first get acquainted with him? Several days after this strike was in progress.

Q. What is your best judgment?

Mr. Heyl: Just a moment. I want to object as not cross examination.

The Court: I don't know where it is cross examination unless you are talking about a special agent.

Mr. Hevl: He is not a special agent.

The Court: Is he a detective?

A. No.

The Court: Was he on this train?

No, sir, he was not.

Mr. Knoblock: I am trying to find out-

Mr. Heyl: The witness said he wasn't. 620Q. Did he do special agent work?

Mr. Heyl: I object as not cross examination.

The Court: I think he may answer.

No, not that I know of. A.

Did Goldby bring any special agent men with him! Q.

A: No. sir.

Did he bring anybody with him at all? Q.

A. As far as I know, he didn't.

On this train January 2, there were eight special agents on this train?

A. Yes, sir.

Q. And they all carried guns?

Yes, sir. A.

- Q. Were they deputy sheriffs or commissioned in any wav?
 - A. Some of them were and some of them weren't.

Q. Which ones were not?

A. Kane, James, Cook, Blanchard, Wheeler and Honeycutt. I think.

The Court: Were not?

A. Were not.

Q. You say you have a sheriff's commission? It's only in Tazewell County, isn't it?

A. Tazewell County. I can use it for-

Q. I am not asking you that. You are deputized out of Tazewell County, is that right?

A. Yes, sir.

Q. Bringing your attention to the incident there you said occurred about opposite the Allied Mills when you mentioned Kneisley and Newdigate, it's a fact you 621 called one of the special agents and instructed him

to pull a gun on Kneisley?

A. I did not.

Q. You called him over, and he pulled his gun?

A. He did not. He didn't even come off the railroad property.

Q. Answer the question. The special agent didn't come

over there?

A. No, sir.

Q. He came down?

A. I motioned for him to get off the engine, and go down the right-of-way.

Q. He uncovered his gun?

A. He did not.

Q. He had his gun out?

A. He did not.

Q. What was that special agent's name?

A. Kane.

Q. From Bushnell? ·

A. Yes, sir,

Q. Newdigate and Kneisley never threw any rocks or shook any clubs?

A. Yes, they did. Q. Oh, they did?

A. Yes.

Q. Who else was with them?

A. They didn't get out of the car. John Gimming was out of the car, and Kneisley was out of the car.

Q. John Gimming and Kneisley got out? Whose car was Kneisley in?

A. I don't know. He came running from the west farther with a club in his hand.

Q. What direction was Gimming's car headed in?

622 A. It was headed west.

Q. Where was your car at that time?

A: Right directly in front of him.

Q. Were you out of your car?

A. No, sir.

Q. What was the condition of the windows in your car and the back window?

A. The back window?

Q. Yes.

A. The back window was pretty well frosted up, but I could see through it.

Q. How about the side window?
A. I had them rolled down.

Q. Both side windows?

A. No.

Q. Which one?

A. Left front.

Q. How cold was it that day?

A. Pretty cold.

Q. How long had it been rolled down?

A. All along the train.

Q. Did you have your sawed-off shotgun lying in the seat?

A. I had it lying in the seat, yes.

Q. How long is that gun?

A. Oh, about thirty-six inches.

Q. And what calibre is it, or gauge?

A. Twelve gauge.

Q. How many shots will it shoot?

A. Five.

623 Q. You had it loaded that day? A. Yes, sir.

Q. These special agents that were on this train, were they more or less under your supervision?

A. Yes, sir.

Q. Who hired those men?

A. I did:

Q. How much did you pay them a day?

Mr. Heyl: I.object; immaterial.

The Court: Sustained. I can't see where it is material.

Q. What direction was Newdigate's car there at the Allied Mills? Which direction was it pointed?

A. Headed back to Peoria.

Q. Who was with Newdigate?

A. I don't know. They didn't get out of the car.

Q. Were their windows so frosted you couldn't see?

A. They were frosted.

Q. That was the reason?

A. Yes.

Q. If you couldn't recognize the rest, how could you recognize Newdigate?

A. He opened the door.

Q. Could you see the man in the right front seat by him?

A. No.

Q. Did Newdigate or Kneisley say anything?

A. Kneisley waved his club and said, "Let's go get them."

Q. Who did he say it to?

A. To the men in the car and Gimming that was out on the road.

624 · Q. Did they go?

- A. They went part way, but not on the right-of-way.
 - Q. They never went on the right-of-way?

A. No.

Q. There was Gimming and Newdigate and Kneisley there. Was that all you recognized?

1. That's all.

Q. Could you tell how many men were in Newdigate's car?

A. No, I couldn't.

Q. How many were in Gimming's?

- A. I know that. They followed me all the way from Peoria. Gimming was out on the road, and Brewster was in.
 - Q. Gimming and Brewster never made any threat toward you that day?

A. Yes.

Q. What did they do?

A. Gimming said, "You are not coming back off the west end, and none of the rest of them."

Q. Where did he say that?

A. Edmund Street crossing going into Hiram Walker's.

Q. He didn't follow that up with any show of force?

Mr. Heyl: I object.

The Court: Was that all he did?

A. He shook his fist at me.

Q. And what else?

A. . That's all.

Q. Who was present when that was done?

A. Arthur Brewster, he and I.

Q. And just you three?

A. Yes.

625 Q. Now, when you went on down to Hollis where you say you saw this bottle thrown, who was directly in front of you there?

A. Who was directly in front of me?

Q. Yes.

A. People lined up around the road, men lined up throwing stones and the man that threw the bottle.

Q. What direction does that highway run there?

A. Well, it runs southwest, I would say.

Q. It runs generally in a northerly and southerly direction, does it?

A. Yes.

Q. What side of the hard road did you park on?

A. Right side.

Q. And what side of the road was the Totten car on?

A. Left side.

Q. How far was Leo Totten out of that car?

A. Not very far; just standing right close to it.

Q. With the door open?

A. Yes.

Q. Both doors?

A. One door.

Q. Which door was closed?

A. If he was headed back toward Peoria, it was the left hand side, driver's side.

Q. The other one was closed?

A. Yes.

Q. Which side was Totten standing on?

A. Right hand side.

Q. That is the side nearest the railroad track?

626 A. Yes. Q. How near was he to the railroad tracks?

A. He was pretty close on the shoulder. Q. How far was he standing from Lucas?

A. Lucas was about ten or fifteen feet from the car.

Q. How far was Totten, in feet, from the car?

A. Just standing right close to it.

Q. What time of the day was this?

About-Between 8 and 8:30; approximately 8:30, I would say.

How far had you parked your car from the Totten Q.

car!

About ten or fifteen feet. A. About ten or fifteen feet? Q.

A.

And you had your left front window rolled down?

A. Yes, sir.

And you had your sawed-off shotgun in there by the Q. side of you?

Yes, sir. A.

You didn't raise it, though? . Q.

A. No.

Up until that time you were still very friendly with Frank Lucas?

Yes, sir.

And you are still friendly with him?

Yes, sir.

As I understand it, you were within ten to fifteen feet of the Totten car, and Lucas was about fifteen feet away from it, where you say you saw him throw the bottle?

A. Yes, sir.

You saw him throw it? Q. A.

Yes, sir.

627 Q. You saw it happen? Yes. sir. A.

Why didn't you stop them there? They ran and got in the car.

He was fifteen feet from the car? Q.

He ran and got in the car, and I got in quick and swung around behind them.

Q. . He was fifteen feet from his car?

A. Yes.

Q. That is all you were from the Totten car !-

From the Totten car? Yes, sir. A.

Q. You had your sawed-off shotgun lying there, didn't you?

A. Yes, sir.

It was available to halt the men right at that place, wasn't it?

A. Yes.

But you didn't do it? Q.

They took off, and I took out after them.

Then you drove seventy to seventy-five miles an hour until you caught them at Western Avenue?

A. Yes, sir.

Did you go through Bartonville that fast?

A. Yes, sir.

Q. Å. Did you go over the viaduct that fast?

Over the viaduct?

Yes, Q. A.

Yes, sir. Did you go up South Adams Street that fast?

A. I slowed down at that bend where I go onto 628 Washington, and so do they—or on Adams,

Did they swing on Washington or-

They turned up Adams to the left, and we both slowed up.

You both slowed up? Q.

Yes, sir. Α.

With reference to them stopping their car, you did nothing except honk your horn?

I pulled up beside them and stuck my gun in the

window and said, "Pull over."

They had already stopped at that time?

A. They had not.

Q. You crowded them to the curb!

Ă. I told them to pull over, and they did.

Q. And you pulled alongside of them?

A. Yes.

Q. Did you honk your horn any time?

A: Yes, I did going up South Adams.

Q. How many times did you honk?

A. Several times.

Could you see them through the back window?

A.

Q. I mean through their back window.

A. Yes.

Q. Their back window was pretty clear?

A. Pretty clear, yes.

Q. You could see them?

A .. I could see them, yes.

Q. And you told them to pull over?

A. Yes.

629Did you have your window rolled down? Yes.

Which window?

Right hand window.

Q. Where did you roll it down?

A. I had it rolled down all the time.

Q. I understood at Hollis you had the left rolled down?

. I had them both rolled down.

Q. At Hollis did I understand you to say you only had the left front window rolled down?

A. I wasn't at Hollis. We didn't get that far. Q. Where you say this throwing took place:

A. I had them both rolled down when I took after this car on the way, on the run, so I could see.

Q. When you stopped those men at Western and Adams,

where was their car?

A. Pulled over to the right hand curb.
Q. And how far from the intersection?

A. Oh, probably a hundred yards maybe. I don't know just how far.

Q. A hundred yards would be almost in the middle of

the block?

A. There is no street that turns off to the right for a long ways.

Q. Which side of the intersection of Western and Adams

were you on?

A. South side.

Q. And you had not reached Western Avenue?

A. No, hadn't reached it yet.

Q. You say you were about a hundred yards from there?

A. Fifty to a hundred yards.

Q. Where was your car parked?

A. My car was parked right beside theirs.

Q. Is that a block with the street car tracks?

A. Yes, sir.

Q. Did you have any trouble with the street car motorman?

A. No, sir.

Q. Did he ask you to move your car?

A. No, sir

Q. Did you tell him he could let his damned car sit there?

A. No, sir.

Q. You got out of your car and had your sawed-off shotgun, is that right?

A. Yes, sir.

Q. When you pulled up there, you just held up your gun and said, "Stop"?

A. I laid it right on the window.

Q. On the window sill, and said, "Stop"?

A. Yes.

Q. Did you say it in that tone of voice?

A. Yes. I said, "Pull over."

Q. Then there was some bystander there, and you asked him to call the police?

A. Yes.

Q. And you made no threats of any kind?

A. No, sir.

Q. You didn't say to Frank Lucas that you were going to shoot him?

A. No, sir.

Q. You didn't say, "Frank Lucas, say your prayers.

I am going to kill you right here"

A. No, sir.

Q. You are sure of that?

631. A. Yes, sir.

Q. You never said to Jack Totten, "Jack Totten, I am going to get you, too"?

A. No, sir.

Q. "I want to do the whole job right here"?

A. No, sir.

Q. You never said at least fifteen to twenty or twenty-five times you were going to kill them right there?

A. No, sir.

Q. You made no threat toward them on that occasion?

A. No, sir.

Q. You weren't standing there with your right hand on the trigger and the thumb of your right hand shifting that safety eatch back and forth?

A. No, sir.

Q. You never had your finger on the trigger at any time?

A. No, sir.

Q. You never had your thumb on the safety catch at any time?

A. No, sir.

Q. You never used any swear words at any time?

A. No.

Q. You never used any vile or opprobrious language at any time?

A. No, sir.

Q. How long did you hold them before the Peoria police came?

A. It seemed like a long time.

Q. How long?

A. Twenty to thirty minutes.

Q. Did you talk with them during that twenty to thirty minutes?

A. No.

632 Q. Just stood, and they sat there?

A. The fact is, I never had a shell pumped in the barrel.

Q. That is what you say now?

A. That is what I say now. I will say it any time.

Q. If you didn't have a shell in the barrel, how did you intend to guard them?

A. I didn't say that. I like to live, and let other people

live.

Q. You never said you were going to kill them?

A. No. sir.

Q. You never waved your sawed-off shotgun around in the air at all?

A. No.

Q. Did you see some people come up there?

A. Oh, yes, there was quite a crowd.

Q. What seemed to cause the crowd to gather?

A. They seen two cars pulled up each side, and I was standing out by the car with a sawed-off shotgun.

Q. Quite a crowd came?

A. Quite a crowd came, yes.

Q. How many?

A. I couldn't say. There was a street car stopped there. There were several cars. I never counted them.

Mr. Knoblock: I think that is all.

Mr. Heyl: I want to ask one question.

The Court: All right!

Mr. Knoblock: One question I have that I forgot.

The Court: Go ahead!

Q. Isn't it a fact that quite frequently coal oil is used as a torch in a locomotive to start it?

A. To start it?

633 Q. Yes, or for light.

- A. I couldn't tell you. I am not connected with the operation of trains.
- Q. And I understand you to testify on direct examination no gasoline or benzine was ever used around the cab?

 The Court: Don't argue with the witness.

He says now he is not familiar with it.

Anything else?

Mr. Knoblock: That's all.

The Court: Anything on your part?

Mr. Heyl: This probably should have been direct.

The Court: All right!

Further Direct Examination by Mr. Heyl.

Now, Mr. Kipling, I will ask you if you recognize the names of the persons who appear on that photograph? The Court: Names on what?

Do you recognize the individuals whose pictures

appear there!

Part of them.

Who are they? Who are the two fellows with clubs over their backs and shoulders? Give their names.

Kirk. We call him "Jake" Kirk.

Is that C. H. Kirk? Clement H. Kirk? Q.

There are three or four Kirks. I don't know their right names. Jake Kirk.

Who is that (pointing)?

The man sitting down on the bench.

With the club over his shoulder?

634 A. Yes.

Who is the other fellow with a club over his shoulder!

A. I can't recognize him.

Mr. Knoblock: May I see that?

Mr. Heyl: No, you can't see it now.

Mr. Knoblock: I think I should see it.

The Court: I think he is entitled to cross-examine on it.

Mr. Heyl: I don't think he is,

The Court: Then the examination may be stricken.

Then I will use somebody else to testify Mr. Hevl: regarding it.

The Court: The last part of the evidence may be

stricken.

Mr. Heyl: I will identify it by somebody else.

The Court: Is that all, gentlemen?

As far as this case is concerned, we will be recessed until 2 o'clock this afternoon,

Trial Recessed at 12:45 o'clock P. M.

Trial Resumed at 2 o'clock P. M.

635 E. R. FUNK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. E. R. Funk.

Q. How old are you, Mr. Funk? .

A. Fifty-three.

Q. Where do you live?

A. Peoria.

Q. By what company are you employed?

A. T. P. & W. Railroad.

Q. . In what capacity have you been employed for the past eight years?

A. Road foreman of engineers.

Mr. Knoblock: I didn't get it.

A. Road foreman of engineers.

Q. On January 2 of this year were you on duty?

A. Yes, sir.

Q. At about what time did you go on duty that morning?

A. 7 A. M.

Q. At what place?
A. At the East Peoria yard.

Q. And who, if anyone, had to do with getting the engine ready to go out that morning?

A. Engineer Gulick and Firemen Q'Brien and Mc-

Arov.

Q. Were you there at the time they got ready?

A. Yes, sir.

Q. What sort of fuel did they use in the engine?

636 A. Bituminous coal.

Q: What time did you depart from the Peoria yard that morning?

A. About 7:40 A. M.

Q. What was your train known as?

A: An extra west.

Q. What was the number of your engine?

A. 41.

Q. And the train was designated as extra 41 west, wasn't it?

A. Yes, sir.

Q. In accordance with the number of your engine?

A. Yes.

Q. Who did you say your engineer was?

A. Gulick.

Q. And who was the fireman?

A. O'Brien and McAvoy.

Q. And who was your head brakeman?

A. Ruddles.

Q. Were they all riding in the engine?

A. Yes, sir.

Q. Did you ride on the engine as you started out?

A. Yes, sir.

Q. Did you have any special agents on the train that morning?

A. I think there was about four.

Q. Who was the conductor of that train?

A. Taylor.

Q. Dick Taylor?

A. Yes, sir.

Q. Also known as Richard Taylor?

A. Yes, sir.

637 Q. As you left the East Peoria yards, was there anything out of the ordinary occurred until you got over to near the Union Station, Peoria?

A. No, sir, we encountered no difficulty whatever:

Q. And about how many cars did you have on your train?

A. About twenty-five.

Q. And were those cars for different points along the road?

A. Yes, sir.

Q. Any of them bound for Keokuk?

A. Yes, sir.

Q. What, if anything, occurred near the point of the Star Union Distributing Company?

A. I was struck by a piece of slag or molder's core about three inches in diameter, and was struck on the right chest.

Q. What side of the engine were you on?

A. I was on the right side.

Q. And where were you standing with reference to the engineer?

A. I was right ahead of the engineer.

Q. And through which window of the cab did this molder's core come?

A. On the right side.

Q. What effect did it have when it struck you?

A. It dazed me momentarily.

Q. What did you say that article was?

A. It was a piece of slag or molder's core.

). About the size of it?

A. About three inches in diameter.

Q. And what did you say the weight of it was in pounds?

A. About three pounds.

Q. Did you see who threw the article?

638 A. No, at 'that time I was looking ahead, and, naturally, at that point I didn't expect any violence or any cowardly attacks.

Mr. Knoblock: I object to that.

The Court: Just answer the question.

A. I didn't expect any-

The Court: Read the question. (Question read by reporter.)

A. No, I didn't.

Q. Did you, immediately following being struck, recognize anyone there?

A. Why, one of those—There was three, and one of those looked like an ex-employee by the name of Kohtz.

Q. Walter Kohtz?

A. Yes, sir.

Q. Had he previously worked for the T. P. & W.?

A. Yes, sir.

Q. Where was this with reference to the Union Station?

A. I would say about, possibly, a mile or a mile and a half west of the Union Station.

Q. Had this Kohtz, Walter Kohtz, been working for the railroad just previous to that time?

A. No, sir.

Q. About how long before had he worked for the rail-

A. About three years.

Q. And had you or not observed him previous to this time after the strike with the pickets?

A. No, this is the first time.

Q. First time you saw him?

A. Yes.

639 Q. Was he in the vicinity of the person who threw this core or slag?

A. Yes.

Mr. Knoblock: I object to that.

Q. Did you see him in the vicinity of where they came from t

A. Yes, sir.

The Court: The objection is overruled. Q. You say you were looking ahead?

A. Yes, sir.

Q. And after you were struck, which direction did you

cast your eyes?

A. Well, like I say, I was dazed momentarily, and, naturally, I looked in the direction from which the stone was thrown.

Mr. Knoblock: I object.

Q. Is that where you saw Kohtz?

A. Yes, sir.

- Q. About how fast was your train moving at that time?
 - A. I imagine about fifteen miles per hour.

 Q. And which part of the cab did it come in?

A. From the right side.

Q. What, if anything, did it do to the cab or the glass?

A. It broke the right windshield glass.

Q. Where is the windshield?

A. It's attached to the side of the cab window.

Q. To protect your eyes as you are looking forward!

A. Yes, sir.

Q. Was there any other damage that you noticed to the engine at that place?

A. None at that time.

640 Q. What did your train do?

A. We proceeded on to the M. & St. L. crossing.

Q. Where is the M. & St. L. crossing with reference to Bartonville or South Peoria?

A. Well, it's—I would say it's about a mile and a half east of Bartonville.

Q. Toward Peoria?

A. Yes, sir.

Q. Is that a regular crossing that your train passes?

A. Yes, sir.

Q. Is that the junction with the M. & St. L. Railroad!

A. Yes, sir.

Q. As you got to the M. & St. L. crossing, what, if anything, occurred?

A. Why, nothing. We picked up orders at the C. B. & Q. tower and stopped for the M. & St. L. crossing, and

then, as we passed the highway crossing just west of the tower, there was several automobiles of strikers, striking employees. There was nothing done other than the man heckled us as we went by.

Q. Did you observe or recognize any of the men that

were there!

A. Yes, sir.

Q. Tell us who you observed. A. Brewster and McMullen.

Q. Is Brewster a former employee!

A. Yes, sir.

Q. And Brakeman Walter McMullen?

A. Yes, sir.

Q. What did you do after you went on down beyond that?

A. I went down to the west end of the M. & St. L. 641 transfer and set out two cars and picked up one.

Q. Then what did you dot

A. Then proceeded on to the west end of track 61, which is opposite the Allied Mills in Bartonville.

Q. What did you do there?

A. Set out ten cars.

Q. What did you observe while you were setting out those cars?

A. Why, some of the striking employees walking up and down the hard road and doing considerable heckling at the time.

Q. Did you recognize any of them?

A. Yes, sir.

Q. Tell us who you recognized.

A. Conductor Kneisley,-

Q. Is that George Kneisley?

A. Yes, sir. -and Gimming and Brewster.

Q. See anything of McMullen there?

A. Yes, sir.

Mr. Knoblock: I object.

Q. Did you see anybody else? A. No, sir, not that I recognized.

Q. Were there more than the number you have named there?

A. Yes, there were.

Q. What were they doing?

Mr. Knoblock: I object as having been asked and answered.

A. They were parading.

The Court: He has answered. Objection sustained.

Running up and down the hard road.

Mr. Elliott: The court sustained the objection.

Q. Who was running A. Engineer Gulick. Who was running the engine?

Did you proceed on beyond the Allied Mills then?

A. Yes, sir.

To about what distance beyond the Allied Mills?

A. I would say about two thousand feet.

And what, if anything, did you notice at that time?

Nothing at all. I just instructed the fireman to open the blow-off cock, when we were suddenly bombarded with stones from the right side.

The right side of your engine?

Yes, sir. A.

Was that next to the highway?

Next to the highway.

Is next to the highway on— Is the highway on the same level as the railroad, or a little higher?

It's a little higher.

Tell us about those stones, character of the stones

and extent of the bombardment.

They were coming so fast, those that came through the cab windows. They would vary in size from an inch and a half to two or three inches in diameter.

Did any of those stones strike anybody in the cab!

Yes, sir.

Who?

A. One of the special agents.

Did you notice anything else come into that cab. aside from the stones?

A. Couple of bottles of some kind of inflammable

liquid.

What happened when those bottles were thrown 643 Q. in?

One struck the engineer and was deflected to possibly the feed valve of the locomotive and bursted and was ignited from the heat from the door, and the cab was a mass of flaming clothing.

What happened to the engineer's clothing?

A. Part of the liquid splashed on his overalls, and he was a mass of flames, also.

Was there more than this bottle thrown in? Q.

A. There was two.

Q. What happened when the second bottle came in!

It ignited.

What part of the engineer's clothing caught fire? Q.

Around his shoulder, and from his waist down to his A. knee.

Did you observe whether anything happened to any Q. portion of his face?

I couldn't see for the flames.

Describe the extent of that flame. Q.

Well, the inside of the cab was enveloped in flames. A.

The whole inside of the cab? Q.

Yes, sir.

Who else was in there besides you and the engineer and fireman?

There was the head brakeman, Ruddles, and the four special agents.

Did you notice anything happen to either of the

special agents?

Yes, one of them sustained a broken knuckle and his hand was badly cut.

That occurred at about the time these glass bottles were thrown in?

A. Yes, sir. Q. How long did that bombardment of stones continue?

A. Oh, it's hard to tell; possibly a minute and a half to two minutes.

Tell us approximately how many were in the crowd that was gathered along there throwing stones.

I couldn't say. I was on the left side of the locomotive.

What is your best judgment as to the number of stones that hit the engine or come in?

It would be hard to say. I couldn't tell, there was

so many of them.

Did you continue on that engine and train until it went on west?

A. Yes, sir.

You may state whether or not you saw any objects in the cab after this bombardment.

Well, just the fragments from the bursted bottles.

Q. Who was the special agent that had his knuckle broken?

.A. I think his name was James.

Where was he taken?

The train was stopped just west of the highway at

Mapleton, and one of the special agents had taken him to the hospital at Canton.

Q. Did you continue on with the train then?

A. We continued on with the train.

Q. While this bombardment was going on of objects being thrown, and these bottles were thrown, I will ask you whether or not you heard any shots.

A. No, I didn't.

- Q. Did you at any time that morning hear any shots?
 A. No, I didn't.
- 645 Q. Did anyone from the cab do any shooting!
 A. Not that I know of.

Q. You didn't hear any?

A. I didn't hear any.

Q. Did any of them have any guns out?

A. No, I didn't see any.

Q. You were in the engine cab all the time?

A. All the time, yes.

Q. After Engineer Gulick was hit, what, if anything, did you do with reference to running the engine?

A. He complained about his vision. Q. What he said wouldn't be proper.

A. I run the engine on account of his vision being impaired.

Mr. Knoblock: I move the latter part be stricken.

The Court: I think it may stand.

Q. To what point did you run the engine?

A. LaHarpe.

Q. Did the rest of the train then go on to Hamilton?

A. Yes, sir.

Q. You left the train at LaHarpe?

A. I continued on to Hamilton.

Q. You continued on to Hamilton?

A. Yes, sir.

Q. What did you do with some of the cars that were in the train?

A. Some of them were set out at LaHarpe.

Q. The cars that were taken to Hamilton, what was done with them?

A. They were set out at Hamilton.

Q. Did you have anything to do with those cars the next morning?

A. No, sir.

646 Q. Did your train or not go over to Keokuk the next morning?

A. It did not.

Q. It did not go?

A. No.

Q. On that train you didn't go over?

A. No.

Q. I understand you to say some of these cars were destined for Keokuk and beyond?

A. Yes, sir.

Q. But you didn't take them over?

A. No, sir.

Q. Those are the cars you left in Hamilton?

A. Yes, sir.

Q. Is that just across the river from Keokuk?

A. Yes, sir.

Q: From what point did these bottles come—were they thrown—with reference to the crowd you had seen throwing stones?

A. Well, from the same direction, from the hard road.

Q. And over what space of distance was it that they continued to throw!

A. I imagine the distance there is about twenty-five feet.

Q. They were all gathered about that point?

A. Of course, I didn't recognize or see any of those that were throwing the stones.

Q. But stones were thrown at about the time the bottles were thrown?

A. Yes.

Mr. Knoblock: I object.

The Court: Objection sustained as repetition.

Mr. Elliott: I think that's all.

647 - Cross-Examination by Mr. Knoblock.

Q. Where do you live here in Peoria, Mr. Funk?

A. My local address, 518 Hamilton.

Q. 518 Hamilton?

A. Hamilton, yes, sir.

Q. And how long have you been employed by the T. P. & W.?

A. Oh, better than eight years.

Q. And when you first went into their employ, what was the nature of your work?

A. I was representing several railway supply companies.

Q. 'Did I understand you to say "several railway supply companies"?

A. Yes, sir.

Q. How long have you been road foreman?

A. Better than eight years.

Q. And your original employment with the T. P. & W. was that of road foreman?

A. Yes, sir.

Q. Are you also— Have you been offered the bonus of \$10.00 a day over and above your salary?

A. No, sir.

Q. You don't get anything extra?

A. No, sir.

Q. Drawing your attention to January 2, 1942, you say you first reported at the East Peoria yards of the plaintiff at about 7 in the morning?

A. Yes, sir.

Q. And Gulick was the engineer, is that right?

. Yes, sir.

Q. .What's his first name?

648 A. Omar.

Q. Where does he live?

A. In East Peoria.

- Q. And how long has he been employed by the T. P.
 - A. Since the 29th of December, 1941.

Q. 1941?

A. Yes.

Q. Do you know where he had been employed before that?

A. No, I don't:

Q. This man O'Brien, what was his first name?

A. I couldn't tell you:

Q. What was his capacity that day?

A. One of the firemen.

Q. Did the engineer have a torch on that locomotive that day?

A. No, sir.

Q. Is it customary to use a torch on that locomotive?

A. Yes, sir.

Q. But he didn't have one along that day?

A. No, sir.

Q. In the torch—or in the torch there is some coal oil or kerosene?

A. In the torch?

Q. Yes, sir.

A. Yes, sir.

Q. That can become ignited if overheated?

A. If it's near the firebox, yes.

Q. Do you know why it wasn't carried along that day?

A. No, I don't.

Q. But that was unusual,-

649 A. Yes, it is.

Q. —that it wasn't along? What was McAvoy's position on that train that day?

A. One of the firemen.

Q. Was either McAvoy or O'Brien a student fireman?

A. Student firemen, yes, sir.

Q. What was McAvoy's first name?

A. I couldn't say.

Q. Do you know where he was from?

A. No, sir.

Q. Do you know when he went into the employ of the T. P. & W.?

A. No, sir.

Q. Do you know approximately when he did?

A. Well, I couldn't say to that, no.

Q. Had he been a former employee for a year or two?

A. No, he hadn't.

Q. Approximately how long had he been employed?

A. I couldn't say.

Q. Had he been employed as long as a week?

A. I couldn't say as to that.

Q. This man Ruddles, what was his first name?

A. I couldn't tell you that.

Q. Do you know where he was from?

A. No, sir, I couldn't.

Q. And his capacity was that of a head brakeman?

A. Yes, sir.

Q. Where did he ride on the train?

A. In the locomotive cab.

Q. In the locomotive cab, and how long had he 650 been employed by the T. P. & W.?

A. I couldn't tell you that.

Q. Had he been employed as much as several months?

A. I couldn't say.

Q. You left the yards at approximately 7:40 A. M., is that right?

A. Yes, sir.

Q. Who was-running the engine at that time?

A. Gulick; Engineer Gulick.

Q. Where were you?

A. On the right side, right directly behind him.

Q. Right behind him?

A. Yes.

Q. Where was McAvoy and O'Brien?

A. In their usual positions as locomotive firemen.

Q. Where is that?

A. One on the deck, and one on the left seat box.

Q. Where was Ruddles riding?

A. Up ahead of the fireman on the left side.

Q. Where were the four special agents?

A. They were in the gangway, and one of them sat by the brakeman on the left side.

Q. They all carried guns, didn't they?

A. I think they did.

Q. Do you know what their names were?

A. No, not other than Mr. James.

Q. Do you know where they come from?

A. No, sir.

Q. Do you know who hired them?

A. No, sir.

- 651 Q. You don't know if the T. P. & W. hired them!
 A. No. sir.
- Q. You don't know how they happened to get on the train that morning?

A. No, I don't.

Q. Did anybody from the T. P. & W. tell you the special agents would be on there that morning?

A. Yes.

Q. Who did?

A. Chief special agent Kipling.

Q. Were there some other special agents on the train other than those in the engine cab?

A. Not that I know of.

Q. What time did Kipling tell you you were going to have these special agents;

A. He didn't say.

Q. What time did he tell you about it?

Mr. Heyl: He answered it.

The Court: Do you remember what time he : d you?

A. No, I don't remember.

Q. You don't recall whether it was that morning, or the day before?

A. I couldn't say.

Q. You described a piece of slag three inches in diameter. You don't know who threw that, do you?

A. No, I couldn't say positively; no.

Q. Did you know the two men that were there with Walter Kohtz?

A. No, I couldn't identify them positively.

Q. If you couldn't identify them, you don't know whether they were former employees, members of the T. P. & W. employ, or not?

652 A. They looked like former employees.

Q. Which former employees did they look like?

A. They looked like Dilley and Evans.

Q. Dilley and Evans?

A. Yes.

Q. But you aren't sure about that?

A. No. sir.

Q. Were they standing behind Kohtz?

A. They were just about opposite each other.

Q. How far was Kohtz standing from the engine?

A. I couldn't say as to that.

Q. What is your best judgment?

A. Well, I would say possible a hundred and fifty feet.

Q. And he threw this piece of slag that weighed about three pounds a hundred and fifty feet and hit you?

A. Yes, I imagine.

Q. Now, you say that down at the M. & St. L. crossing you were heckled by Brewster and McMullen?

A. Yes.

Q. Did you see any of the members of your crew shaking their fists and thumbing their noses at these men?

A. No, I didn't.

Q. You didn't see that?

A. No. sir.

Q. In fact, even you yourself made some motions toward them, didn't you?

A. Not that I remember.

Q. Then when you went to the Aflied Mills at Barton, ville, there you say you were heckled again by Kneis-653 ley, Gimming, Brewster and McMullen, is that right?

A. Yes, sir.
Q. Did you see some of your men thumbing their noses and shaking their fists at them there?

A. No, sir.

Q. You didn't see that? You didn't see Gulick do that?

A. I was in the cab. Sure, I saw Gulick. I was right beside him.

Q. You didn't see him do that, though?

A. No.

Q. You didn't see McAvoy or O'Brien doing it, either?

A. No, sir.

Q. You say you went on about two thousand feet west, and you instructed the engineer or fireman—

A. Fireman.

Q. -to open the blow-off cock, is that right?

A. Yes, sir.

Q. What does that do?

A. It settles the water in the boiler to eliminate foaming.

Q. What occurs on the side of the engine?

A. Steam and water escaping from the blow-cock.

Q. Anybody standing there would be covered with water and steam?

A. No, sir, nobody on that side of the engine.

Q. It couldn't be possible men standing there would be burned?

A. No. sir.

Mr. Heyl: I object. He said it was impossible on that side of the engine.

The Court: He has answered.

Q. I thought you said that was the side the rocks come from?

A. No, sir, this was the left side of the locomotive.

654 Q. And you say that no one was hit with that steam and water, hot water, that was blown off?

A. There was nobody over there.
Q. You were over on the right side?

A. Not at the time. I instructed the fireman to blow off the blow-off cock.

Q. You had gotten over in the left side of the cab

A. Yes.

Q. Did you walk over there and instruct him?

A. Yes, sir.

Q. You didn't-call over and tell him?

A. No, sir.

Q. If someone were struck with this hot steam and water, that would be painful to them, wouldn't it?

A. It all depends; not all the time.

Q. After that was done, that was about when the rocks started coming?

A: Just previous to the time the rocks started coming.

Q. The rocks started first?

A. No, just shortly after the blow cock was opened.

Q. Then the rocks started?

A. Yes.

Q. You say that you did not see anyone throw these bottles that you speak of?

A. No, sir.

Q. And you don't know what was in the bottles, do you?

A. No, just some inflammable liquid.

Q. That came from the right side of the engine?

A. Yes, sir.

655 Q. Now, when the—that blow-off cock was opened, letting off that steam and water, and the rocks were coming and the flames that you spoke of, you were in the cab during the entire time, is that right?

A. Most of the time, yes.

Q. Were you out of the cab at any time?

A. Yes.

Q. Where were you?

A. Trying to shut the blow-off cock from the left step of the locomotive.

Q. How long did it take you to do that?

A. Oh, possibly thirty seconds.

Q. And then you got back in the cab?

A. Yes.

Q. And you are sure that morning you heard no shooting coming out of the cab at all?

A. No, I didn't.

Q. Those special agents up there never fired their guns in any way?

A. No, they did not.

Q. What types of guns did they have?

A. I couldn't tell you that. Q. Did you see them?

A. Not out of the holsters, no. Q. How many did each one have?

A. I couldn't tell you that.

Q. You observed all four of those special agents all the

time, and at no time did any one of them take their guns from the holster?

A. Not that I noticed.

Q. If there had been any shooting by them from 656 the cab, you would have heard it?

A. I couldn't hear anything from the noise of the

blow-off cock.

Q. There might have been some shooting, and you not know about it?

A. There might have been some shooting, but I couldn't

have heard it.

Q. There is a blow-off cock on both sides of this engine, isn't that right?

A. Yes, sir.

Q. The engine you had that day?

A. Yes, sir.

Q. There is one on the right hand side?

A. Yes, sir.

Q. But that one, you say, was not opened?

A. It was not opened.

Q. Did you— After this occasion did you say you continued to operate the engine after these flames that you are speaking about?

A. Shortly after, yes.

Q. The train kept on going down the track, didn't it?

A. Yes, sir.

Q. And all eight of you remained in the cab?

A. Yes, sir.

Q. None of you left the cab? Up there, I mean.

A. No, sir.

Q. Not until you let the special agent off somewhere down along the line?

A. Yes, sir.

Q. Engineer Gulick completed the run with you that day?

A. Yes, sir.

Q. In fact, he drove the engine part of the way after this?

657 A. Yes, sir.

Q. And you were not able to identify anybody where these bottles were thrown from, or these rocks came?

A. No, sir.

Q. And after this occurred, did you report this to any law-enforcement officers or public officials?

A. I did not.

Q. Did you swear out warrants or attempt to secure any investigation of the matter?

A. No, sir.

Q. Did you ever work as an engineer any place, Mr. Funk?

A. No, sir.

Q. Who were you employed by? I asked you that question. Were you ever employed by any other railroad company before?

A. Yes; sir.

Q. Which one?

A. Burlington.

Q. What year? A. From 1911 to 1916.

Q. And in what capacity?

A. Locomotive fireman and fuel supervisor.

Q. Is that the last railroad experience you had prior to going to work for the T. P. & W.?

A. Yes, sir.

Mr. Knoblock: That's all.

Mr. Elliott: I neglected one question I should have asked on direct.

658 Further Direct Examination by Mr. Elliott.

Q. When these bottles came in and broke, did you or not observe anything with reference to fumes from them?

A. Yes, there was an odor from this liquid.

Q. What was the nature of that odor?

A. Well, it resembled benzine.

Q. You are familiar with the smell of benzine, are you?

A. Yes.

Q. Did you have any benzine on that engine that day prior to the time these bottles were thrown in?

A. No, sir.

Q. Was there any gasoline on that engine prior?

A. No, sir.

Q. Who was running the engine at the time that these bottles came in?

A. Engineer Gulick.

Q. And you were where, with reference to him?

A. I just stepped over to the left side of the cab.

Mr. Elliott: I see. That is all.

The Court: Cross-examination?

659 Mr. Heyl: I am recalling Mr. Kipling for one question.

HAROLD E. KIPLING, recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Harold E. Kipling.

Q. You are the same Harold E. Kipling that testified this morning?

A. Yes, sir.

Q. Mr. Kipling, I believe you stated this morning you had charge of the employ of special agents,—

A. Yes, sir.

Q. —is that correct?

A. Yes, sir.

Q. Did you or not give any instructions to all of the special agents under you working for the T. P. & W. Railroad during this strike with reference to the use of firearms?

A. Yes.

Mr. Knoblock: I object to that. The Court: I think he may answer.

Q. What instructions did you give them?

A. I said absolutely not to use their weapons unless they were attacked.

The Court: What did you tell them?

Q. What did you tell them?

A. I told them not to use their guns unless they 660 were attacked by them being hurt and damaging our property, and being stoned, or anything that would hurt them.

Q. Personally?

A. Yes, personally.

Q. Is that what you mean?

A. They were out there to protect the employees.

Mr. Knoblock: There is nothing pending. The Court: He answered the question.

Q. Did you instruct them to or not to use their guns in the defense of the property, or only their person?

A. Person.

Mr. Knoblock: I object to the leading form of the question.

The Court: He has answered.

Mr. Heyl: That's all.

The Court: Cross-examine.

Cross-Examination by Mr. Knoblock.

Who gave these men their guns?

I did.

Who bought the ammunition for them?

I did.

Q. A. Who instructed you to hire them?

The company.

Whom do you mean by "the company"?

Mr. McNear.

You got those orders from him direct?

And you got your orders direct from him to give these men guns?

A. No, sir. 661

Q. Where did you get these orders?

I gave them to them,

That was your own idea, is that it?

Yes, sir.

Did Mr. McNear know you were going to give these men guns?

He never told me not to.

He never told you not to?

A. No.

Has he ever reprimanded you for doing that?

Mr. Heyl: I object; improper.

The Court: Sustained.

Has he ever complained later because you gave them to him?

Mr. Heyl: I object.

The Court: We are not trying Mr. McNear. It makes no difference whether McNear did or not. All this court is interested in is if they had guns, and what they were using them for, and if they themselves created any disturbance. I can't see where this has anything to do with

what the company or anybody told them to do. It is purely a question: what did he, as an agent of this company, tell these men?

For that reason, the objection will be sustained.

Mr. Knoblock: That's all. The Court: Is that all?

662 OMAR C. GULICK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to .

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Omar Charles Gulick.

Q. . Where do you live, Mr. Gulick?

A., 117 Meadows Avenue, East Peoria.

How-

Mr. Knoblock: • I can't hear you. Meadows Avenue?

Meadows Avenue. How old are you?

Forty-nine. A.

Q. And how long have you lived in East Peoris?

I moved there thirteen years ago. A.

Q. What is your business?

A. At present? Engineer.

Q. What has been your business in the past?

A. Well, railroad man, construction man.

Q. And how long have you done railroad work?

A. 1919 to 1929.

For the T. P. & W.?

A. Yes, sir.

In what capacity! Q.

Fireman and engineer. A.

Now, on January 2, 1942, were you connected with 41 west? Extra west?

A. Yes, sir. Q. And in what capacity?

Engineer.

Now, will you tell the court just what happened from the time you left the yards in East Peoria until you got down to the American Milling plant?

A. We left the yard at 7:40, near that, and proceeded

to Peoria, down through the C. B. & Q. yard, still on C. B. & Q. track. How far do you want to go?

Q. What happened?

A. We had some rocks thrown at us near the back of the Star Brewing Company distributing plant.

Q. That is on what street?

A. I don't know the street.

Q. Down-

A. Down near 2800 or 2900 South Adams Street.

Q. South Washington Street?

A. South Washington.

Q. Did you recognize any of the men there that were throwing the rocks and stones and bricks, or whatever they were?

A. I think at that time I recognized one man.

Q. Who was that?

A. Bill Evans.

Q. And was formerly employed by this railroad?

A. He was.

Q. Were there any other fellows there!

A. There was several fellows there, but I didn't recognize any of them.

Q. Did you see anyone in your engine receive any of these objects?

A. Yes, sir.

664 Q. Who was that?

A. Mr. Funk.

Q. What happened?

A. He was hit in the chest or-by an object of some kind.

Q. What did it look like?

A. It looked like a burned cinder or core of some kind.

Q. What was the size of it?

A. Well, in the neighborhood of a baseball, or maybe a little bigger.

Q. Where was the train when he received that?

A. That was when we was at the Star Model Distributing Company.

Q. Was there any damage done to the engine?

A. Not at that particular point.

Q. Where was the damage done?

Mr. Knoblock: I object.

The Court: Yes. What happened next?

Q. What happened after that?

A. We proceeded on down to the M. & St. L. crossing.

Q. What happened there?
A. Nothing happened there.

Q. What happened on beyond that?

A. Nothing particular until we went out to the American Milling Company and set out ten cars on track 61

Q. Then what did you do after that?

A. Coupled up the train, and proceeded on our way.

Q. After you had coupled and started west, how far had you proceeded until something else happened?

A. I suppose in the neighborhood of two thousand feet.

Q. Who was running the engine at that time?

665 A. I was.

Q. How fast were you traveling?

A. Not to exceed twenty miles an hour, anyhow; fifteen to twenty miles.

Q. How many cars did you have on the train, if you

recall f

A. I don't know exactly. I suppose in the neighborhood of sixteen, seventeen cars.

Q. And you were on the right side of that engine, I

take it?

A. Yes.

Q. Next to the hard road?

A. That's right.

Q. Were there any windows in the cab of the engine!

A. Were there any in the cab?

Q. Yes, sir.

A. Yes.

- Q. How about the windshield? Was there a windshield?
 - A. It was broken.
 - Q. At that time?

A. Yes, sir.

Q. When was it broken? That is what I am trying to find out.

A. We was running when an object hit the windows and broke them.

Q. After you left the American Milling plant and started west, did you observe anyone on the highway?

A. Not for several feet. When we was setting out

Q. Whom did you observe?

A. I didn't know any of them there.

Q. After you hooked up and started west, did you notice anybody down the road?

A. Not for quite a ways.

666 Q. When you got down there?
A. When we was attacked.

. What did you observe? .

A. There was a lot of stones or bricks and stuff thrown against the engine.

Q. Did you look over to the road then?

A. Oh, yes.

Q. What did you see there?
A. I seen a bunch of men.

Q. How many?

A. I didn't have time to count, but I imagine twenty-five to thirty men.

Q. Did you recognize anyone there that threw any-

thing?

A. No. I didn't.

Q. Did you recognize anyone along the road there?

A. Not that I knew, no.

Q. Now, did anything come into the engine?

A. Yes. Q. What?

A. There was rocks and bricks, and a bottle thrown with some inflammable liquid.

Q. How did that get in the engine?

A. Come in through the window.

Q. Was there glass in the window?

A. No, the window was open.

Q. What happened?

A. The bottle of liquid, inflammable liquid, hit me on the chest and glanced over against the boiler and ignited.

Q. Then what happened?

667 A. There was quite a fire for a while, and there was another bottle thrown and it also broke.

Q. Did it ignite, too?

A. It must have.

Mr. Knoblock: I object.

The Court: Yes. If he knows,-

Q. Do you know whether it did or not?

A. Well, it certainly did.

Q. What happened after this bottle was broken! What happened to the men inside!

A. To the men inside?

Q. Yes.

A. I immediately caught in flames. I stopped the train as quick as I could to keep from fanning the flames.

Q. What about your own person?

A. I was a-fire all over, as far as that's concerned.

Q. Did it have any effect on you?

A. It burned my eyes and ears there—and difficulty in breathing for quite a little bit until I got it out.

Q. Do you know Guy Lucas?

A. Guy Lucas? I did years ago. Q. Sometimes known as Frank Lucas?

A. I don't know whether his name is Frank Lucas or not.

Q. Formerly an employee of the railroad, wasn't he!

A. He was a fireman when I was there.

Q. I will ask you if you observed Guy Lucas along that railroad that morning.

A. No.

Mr. Knoblock: P-object as having been asked and 668 answered.

The Court: He said he didn't.

Q. What kind of bottles were these two bottles that came into the engine?

A. Well, part of the label on one—the bottle was the

style of a gin bottle.

Q. What about the other one?

A. It would be pretty hard to say what that was, I didn't see no label.

Q. What size bottles were they?

A. They was either half pint or pint.

Q. Was there any other—anyone injured while on that locomotive any time that morning?

A. Yes, the man right directly behind me; his hand was

injured.

Q. Did you see him?

A. I seen him, yes.

Q. What was the nature of his injury?

A. When I saw it, his hand was bloody, and I couldn't tell much about how bad he was hurt.

Q. Do you know, from what you observed, as to how this happened? This injury?

A. Well, yes.

Q. How did it happen?

A. He had his hand behind me and hold of the arm rest on the engine.

Mr. Knoblock: I object, and move it be stricken.

The Court: What is the objection?

Mr. Knoblock: That he must have had.

He did have.

The Court: Is that correct? Did you see that? A. I knew the man was directly behind me, and had his arm behind me.

The Court: Do you know where his arm was?

A. Yes.

The Court: So that what you have stated is true?

That's right.

The Court: Go ahead!

Now, after you left- Was there anyone in the engine that you know of that used any firearms?

A. No, sir.

Were there any of the special agents that you observed shooting?

A. No, sir.

Q. Did you hear any noise of any shooting? A. No, I couldn't distinguish the noise of shooting, I suppose, on account of the rattle in the cab of the rocks.

Q. Did you see anyone displaying any firearms, or using any firearms?

No, sir.

Q. Or having them in their hands while they were in the cab?

A. No, sir, I did not.

Q. After that happened, you started on west? Did anything happen as you reached Wheeler's crossing?

A. No, sir.

Q. Or as you approached Mapleton?

A. No, sir.

Q. Did anything further happen to you that day?.

A. It did not

It did not.

Q. Where did you leave this man that was injured?

Just west of Mapleton, the first crossing.

Now, who ran the engine after these bottles had exploded in the cab?

A. Mr. Funk ran the engine the biggest part of the day, the trip.

Q. Were you able to run it?

I was possibly able, but my eye was hurt pretty bad, watering, and I didn't take any chance on it.

Q. This occurred on January 2, 1941, is that correct?

A. Yes, 1942.

Q. Now, on December 30, 1941, were you on duty!

Mr. Knoblock: I didn't get that question.

(Question read by reporter.)

A. Yes, sir.

Q. On extra 41 west?

A. Yes, sir.

Q. What time did you leave Peoria?

A. Went to work at 10 o'clock, left Peoria about 11, I think, 11:30.

Q. Left the yard about 10?

A. I don't remember just the time.

Q. Did anything happen after you left Peoria that morning?

A. Nothing unusual until we got over on the west end.

Q. Then what happened?

A. This side, east of Sciota, there was rocks thrown against the left side of the engine. I didn't see none, but I heard them.

Q. Any damage to the engine?

A. Not any.

Q. Now, at Ferris, Illinois, what happened?

A. There was more rocks thrown on the left side.

Q. Where?

A. Left side of the engine.

Q. What about Taber's crossing at Hamilton?
A. There were several there.

671 Mr. Knoblock: What?

A. There were several there.
Q. You returned December 31, 1941, did you?.

A. Yes, sir.

Q. Did anything happen after you got back to Peoria!

A. Not unusual until we got off of the Franklin Street

budge.

Q. What happened on West Washington Street crossing?

A. Rocks thrown at the right side of the engine there.

Q. A little louder, please.

A. Rocks thrown at the right side of the engine there.

Q. That occurred at about what time?

A. Soon after dark. I don't know just what time we cleared that night.

Q: Did you recognize the mer who threw the rocks?.

A. I did not.

- Q. Was there more than one man there!
- A. Yes, there was three that I saw.

Q. How many stones were thrown?

A. Well, I wouldn't say more than half a dozen.

Q. Was the throwing of the stones in all the incidents that you have mentioned of the same character; That is, thrown at the engine?

A. They seemed to be, yes.

Q. Did you see any of these men carrying anything in their hands at any time?

A. No, I didn't. It was dark.

Q. Do you know where they got the stones?

A. I wouldn't have no idea.

Mr. Heyl: All right. That's all.

672 Cross-Examination by Mr. Knoblock.

- Q. When did you first go to work for the T. P. & W., Mr. Gulick?
- A. 1919; soon after I came out of the service.

Q. When?

A. After I came out of the army in 1919.

Q. Had you had any railroad experience prior to that?

A. No.

Q. What was the nature of your work from 1919 to '29?

A. Fireman and engine man, engineer.
Q. When did you start running an engine?

A. Spring of 27.

Q. Now, on January 2, 1942, you were an engineer on what is known as 41 extra west, is that right?

A. Yes, sir.

Q. And you left the yards at about 7:40 A. M.?

A. Yes, sir.

Q. There was nothing unusual, you say, until you reached the Star Model Brewery—

A. That's right.

Q. —or storehouse or something, in the 2900 block South Washington Street?

A. It's near that.

Q. You saw Bill Eyans there, is that right?

A. Yes, sir.

Q. Did you see anybody else there?

- A. Yes, there was other men, but I didn't know them.
- Q. How long have you known Bill Evans?

A. Since possibly 1920.

Q. What was Bill Evans doing there?

673 A. Teouldn't tell you. I don't know.

Q. Doing anything other than standing there?

A. As far as I know,—

Q. He was standing there?

A. He was there, yes.

Q. You didn't see anybody throw the object that hit Mr. Funk in the chest, did you?

A. I couldn't say I saw him directly, no.

Q. How far was Bill Evans from the engineer at that time? About a hundred and fifty feet?

A. Possibly not that far.

Q. About how far would you say?

A. I would say in the neighborhood of a hundred feet.

Q. What?

A. From seventy-five to a hundred feet.

Q. And there wasn't anything that happened down at the M. & St. L. crossing, you say?

A. Not that I seen.

Q. When you got over to the Allied Mills, or a place opposite the Allied Mills, did you see Special Agent Kipling along the road in his car?

A. No, I didn't.

Q. How many special agents did you have in the cab of your engine that day?

A. Four.

Q. Did they carry guns?

A. I don't know.

Q. As far as you know, they didn't?

A. That is right.

674 Q. Did they have holsters on them?

A. I don't know that.

Q. Didn't you see them carry them on their hips in the holster?

A. I have other duties.

Q. I understand that, but didn't you see one of the special agents get out of the cab of your engine, and walk out there on the ground?

A. When we was setting those cars out, there was, but

I didn't know him.

Q. You saw him?

Mr. Heyl: Where are you asking about?

Mr. Knoblock: Allied Mills.

A. When we set out cars at Allied Mills, there was.

Q. And he walked down from the cab, and walked along the ground?

A. Along the edge of the train.

Q. Did you see him pull his coat back, and put his hand on his gun butt?

A. I did not.

Q. As you went south about two thousand feet, Mr. Funk instructed the fireman to let the blow-off cock out, didn't he?

A. Yes, as far as I know he did.

Q. . And they went off on both sides of the train?

A. What's that?

Q. They were let out on both sides of the train, weren't they?

A. No, sir.

Q. This engine had them on both sides?

A. Yes, sir.

Q. Wasn't the steam let off the right side and left side both?

A. No, sir.

675. Q. Which side was it let off?

A. Left side.

Q. When you let the blow-off cock out, that lets the steam and hot water out?

A. Yes, sir.

Q. And anyone sprayed with that could be pretty badly burned?

A. I presume they could.

Q. That is pretty hot when it comes out of there-doesn't it? Isn't it?

A. Pretty much pressure, yes, boiler pressure.

- Q. How many cars did you have on that train?
- A. Well, after we had set out at the Allied Mills?

Q. Yes.

A. I presume sixteen or seventeen cars. I don't know exactly.

Q. Do you know about the special agents along the

rest of the train?

R. None but the four that was on the engine.

Q. When you got over to Hamilton, you saw the rest of the special agents? You knew they were on your train?

A. I presumed there was.

Q. All together there was eight?

A. I don't know.

Q. About that?

I don't know; four on the engine.

You saw some when you got to Hamilton?

The same ones was in there. I believe we changed at Canton.

Q. I see. Did you see any of these special agents shooting there when you let the steam off?

I didn't let the steam off.

When the fireman let it off.

676

A. No, sir. Q. You neve You never saw a special agent use a gun at all at that time?

A. I did not.

You didn't even hear them? Q.

A. No. sir.

It was a short time after the steam was let off the rocks started to come, isn't that right?

A. I never paid no attention to that, but about the same

time, I imagine.

After the rocks started coming, then these bottles came in, is that right?

Yes.

And all that time the steam was being turned on? Let off?

A. I presume it was.

Q. 'You don't know- You didn't see anybody out there along that road two thousand feet south of the Allied Mills?

A. When we reached the Allied Mills?

Q. Yes.

No. A.

Q. You couldn't identify anybody?

Ã. Not as we went along.

Q. A. You never saw anybody there?

Along the highway when they throwed that?

Q. Yes. A. Yes.

You saw the man who did it?

Yes. A.

You didn't recognize him? A. I could recognize him.

677 You could? Who is it? I don't know his name, but I could identify him if he was dressed in the garb, or near that.

What kind of a looking man was he? Q.

He was a big man. A.

Did you see anybody else with him?

There was several there I didn't know. I didn't have much time.

Didn't I understand you to say on direct examination you never saw that bottle until it hit the inside?

I never said that.

When did you first see the bottle?

A. When it was thrown.

How far from the tracks was this man standing?

On the edge of the bank, between the highway and the tracks.

Q. How far would you say that was?

It wasn't very far. I wouldn't say over thirty, thirty-five feet.

There was none of you left the cab after this attack?

No. sir.

All of you remained in there?

A. Yes, sir.

You slowed the train down for a little ways, and started up again?

I stopped the train.

Where did you stop it?
As soon as I could after the fire started. A.

Q. Did any of these men along the highway come down?

I was putting the fire out on myself. A.

Did anybody show up but your engine crew? A. Not that I saw.

678 Q. How far down the track did you get the train stopped?

Not very far. I stopped her immediately. A.

How far? Q.

That would be pretty hard to estimate how many feet; a very few feet.

Close to a mile? A tenth of a mile? Quarter of a Q.

mile !

A. I wouldn't say over six car lengths, or eight.

A car is about forty feet in length, is that right?

That's right.

On this date of January 2, 1941-1942-besides Funk, who else was in the cab there as a member of the train crew?

A. A fireman and a student fireman.

What were their names?

McAvoy was the name of one of them. O'Brien was the other.

Q. Then on December 30, 1941, you took extra 41 west, is that right?

A. Yes, sir.

Q. That was two days before you made this run on January 2, is that right?

A. Third day.

Q. Did you have any special agents on that train?

A. Yes.

Q. How many did you have on there then?

A. There was one on the engine.

Q. Was there another one on the back end?

A. I don't know.

Q. Was that man there with you on the engine at that time armed?

A. I don't know.

Q. You didn't see him have any gun?

A. No, sir.

679 Q. How did you know he was a special agent?
A: I was told he was.

Q. Who told you?

A. By himself.

Q. Who told you these four men were special agents on January 2?

A. Just taken for granted, I guess, they were.

Q. No one told you that?

A. Well, I can't say that they did.

Q. You didn't see them have any guns on them?

A. No, sir.

Q. Then on December 30 you say you left Peoria about

A. That's right.

Q. And nothing happened until you reached Sciota?

A. East of Sciota.

Q. When did you reach Sciota? A. About 6:30, as near as I remember.

Q. It was dark?

A. It was.

Q. When you say 6:30, you mean P. M. in the evening?

A. Yes, sir.

Q. You didn't see anybody throw rocks on that occa-

A. No.

- Q. You have no idea?
- A. No, sir.

Q. When you got to Ferris you didn't see anybody throwing rocks there?

A. No. sir, that was on the left side of the engine.

Q. What?

A. They were on the left side of the engine.

680 Q. You don't know who did throw them?

. No, sir.

Q. At Taber crossing you didn't see anybody throw anything there?

A.. No.

Q. And you don't know who did?

A. No, sir.

Q. Have you ever driven an engine and had people throw rocks at you other than on these occasions?

A. Never did.

Q. You never did!

A. No. sir.

Q. On December 31, that was on your trip back from Hamilton, Illinois?

A. That's right.

Q. When you got on the other side of the Franklin Street bridge, that is just across in Tazewell County, you mean?

A. Yes.

Q. It was dark then, too, wasn't it?

A. Yes, sir.

- Q. You say you saw three men there?
- A. I got a glimpse of three men, yes. Q. Do you know who they were!

A. I couldn't.

Q. Could you identify them?

A. No, sir.

Q. You say you saw them throwing?

A. I saw them throwing, yes.

Q. Did the rest of the men in the cab see it?

A. I don't think so. Not to my knowledge they 681 didn't. They were on the other side of the engine.

Mr. Knoblock: That's all.

The Court: Is that all?

Redirect Examination by Mr. Heyl.

Q. You, Mr. Gulick, believe that you can identify the man that you saw throwing?

A. I am satisfied I can.

Q. Will you go down here and see if you can pick him out in the court room?

The Court: I think you can do that. I can see him from right here.

Q. Which man is he?

Second row back, and the third man in. Mr. Heyl: Will the gentleman stand up?

(Person named rises.)

Is that Mr. Frank W. Lucas? Is that the man?

I don't know his name, but that is the man.

The man that threw the bottle?

Yes.

Mr. Heyl: That's all.

The Court: Anything further?

Recross Examination by Mr. Knoblock.

Q. Mr. Gulick, on direct examination did I hear you say that, as you passed that point two thousand feet south of the American Milling Company, that you could not identify anyone there? Isn't that what you said?

A. I don't mean that statement that way. I didn't · identify anybody/when we was setting out those cars.

Q. But when you were two thousand feet south of the Allied Mills, didn't you say on direct examination you couldn't identify anyone as you passed there?

A. When the man was thirty feet from there?

The Court: Did you say that or not?

No, I didn't say that.

Were there some rocks thrown before the bottle Q. came in?

A. There was.

You are sure of that?

Yes, sir. A.

How many rocks were thrown before the bottle Q. came in?

A. I couldn't say; several.

Q. How long had rocks been thrown before the bottle came in?

A. Not very long; it all happened immediately.

Did you see who threw the rocks? .

Well, I couldn't-I seen men throwing rocks, but I couldn't identify them.

Q. You couldn't recognize them?

A. No, I couldn't. I didn't have much time to look.

Mr. Knoblock: I think that is all.

The Court: Is that all? That's all. Mr. Heyl:

The Court: We will be at recess for a few moments.

(Recess.)

683 EARL RILEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name? Q.

Earl Riley.

Q. Where do you live? A. Washington, Illinois.

Q. A. What is your age, and what is your business?

Restaurant proprietor.

Q. A. How old are you? Thirty-six.

Q. How long have you lived in Washington? A. All my life.

Q. A. Born there, were you?

Yes, sir.

Q. What is the name of your restaurant?

A. Mickey's Restaurant.

Q. Where is Mickey's Restaurant?

On Peoria Street. A.

Q. Where, with reference to the square? The public square?

It's on the west side. A.

Q. Were you in your restaurant last Thursday evening?

A. I was.

That was January 8, 1942? Q.

A.

I will ask you if a gentleman came there to the Q. restaurant? .

A. He did.

Do you see him in the court room? 684

A. Yes.

Q. Will you come down here and point him out, please? Point him out, which one it is

A. (Witness complies.) This man right here (point-

ing).

Q. You point to the second man in the second row, is that right?

A. Yes.

Mr. Heyl: Will you stand up and give us your name? Mr. Kneisley: Kneisley.

Q. George C. Kneisley? Mr. Kneisley: Yes, sir.

Q. Did you have a conversation with that man that evening?

A. Yes, I did.

Q. And was there anyone present there in the room?

A. My wife.

Q. And are either you or your wife interested in any way in the T. P. & W. Railroad?

A. I am not.

Q. Were you subpoenaed to come here this afternoon?

A. I was.

Q. Will you tell the court what this man said to you at that time? Just tell the whole conversation, just what he said.

A. He come in, sat there for a while, and finally asked me if I knew where Harry Kipling lived, and I said I didn't.

Q. What is Harry Kipling?

A. He used to be a plumber in Washington.

Q. What is he doing now?

A. As far as I know now, he is working at the round-house at the T. P. & W.

685 Q. That is not the special agent?

A. No.

Q. Go ahead.

A. He asked me if he still run a store, and I said I didn't know, which I really didn't know, whether he did run a store. He asked me where Weaver—

Q. Widmer?

A. Widmer boys—and he asked me about some other fellow, which I don't know. He just lived there a short time.

Q. Do you know the Widmer boys?

A. No.

Q. Do you know Mr. Waughop?

A. Homer Waughop?

Yes.

A. Know him personally.

Q. What did he say about Waughop, or ask about it? A. He said Homer Waughop worked there two days and went home, was supposed to be sick.

Q. What else did he say?

A. He said he didn't think a man in business would go and work on a strike.

Mr. Knoblock: A man in business what?

Mr. Heyl: Would go and work on a strike.

A. I said I didn't even know if he was working there at the time, which I didn't.

What else did he say?

He said, "After it is all over with, Homer Waughop will pay 'or this."

Q. And did he say what would happen to them? A. They would demolish the place.

686 A. They would demoli Q. They would what?

Demolish the place.

His place?

Yes.

What else did he say about this railroad?

I asked him about the section gang going down in front of the train.

Q. What else?

He said they didn't interfere. He said if they wanted them to stop, they could stop them by stretching wire across the track.

What did he say the wire would do?

A. Cut their heads off.

Q. Did he say anything in connection with that? Did he make any further statement in connection with that?

No.

What else did he say?

Q. What else did he say?
A. I said something, could he wreck a gang—with the section gang in front of a train. He said, "Yes, we work in between them."

What else was said?

That's all I said to him. A.

How did he get over there? Do you know?

Q. A. In a car.

Q. Did you see him come or go?

In a car.

Q. Car? Drive away, did he?

Yes.

You didn't see him come up, though, did you? No.

Q. 687 You saw him leave?

A. Yes.

Was there anyone with him?

Not that I know of.

How long was he in your place?

A. Oh, I wouldn't say over fifteen or twenty minutes.

Was he a stranger to you at that time?

I didn't know the man.

Mr. Heyl: That's all. Cross examine.

Cross-Examination by Mr. Knoblock.

Mr. Riley, how long have you lived at Washington, Illinois?

A. All my life.

How long have you been running this restaurant? I have been in business since 1928.

A.

- And whom do you know that is connected with the T. P. & W.
 - That's working there? A.

Yes. Q.

I just knew Harry Kipling at that time.

How long have you known Harry Kipling? I have known him for ten or twelve years.

And after you had this conversation with Kneisley, did you tell Kipling about it?

I never told Kipling, no.

Whom did you tell about it?

A. George Mahle.

Q. Whot

George Mahle. A.

How do you spell that last name? 688 Mr. Heyl: M-a-h-l-e.

Let him spell it. Is that it? M-a-h-l-e?

I think it is.

Is that the only man you told it to?

A. That is the only man.

Q. When did you tell him about this?

Last night.

Is George Mahle connected with the T. P. & W. in any Q. wav!

A. Yes, he is.

In what way is he connected with the T. P. & W.?

A. To my knowledge, I think he works on pumps.

Q. In the yards?

A. All along the line.

Q. You mean pumps on the engines?

A. No.

Q. What kind of pumps?

A. Pumping water.

Q. And you say Kneisley came in there all by himself? A. Yes, sir.

Q. And what time of the evening was he there?

A. I would say between 9 and 10 o'clock.

Q. Was there anybody else in your restaurant outside of you and your wife?

A. No, there wasn't; just the three of us.

Q. He pust wanted to know where Homer Waughop lived, is that it?

A. He didn't ask about Homer Waughop. He asked

for Harry Kipling.

Q. Oh, he asked where Harry Kipling lived? Were you able to tell him that?

A. No, because I didn't know.

Q. He just asked about the Widmer boys, and you didn't know them?

A. I don't know them at all.

Q. Nothing was said about them?

A. No.

Q. And he then asked about Homer Waughon?

A. Yes.

Q. And he said he didn't think a man— Is Waughop the man that was in business?

A. Yes.

Q. What business is he in?

A. In the Casino Gardens, selling liquor, and runs bowling alleys.

Q. Where is the Casino Gardens located?

A. Out east of town about a mile and a quarter.

Q. He said he didn't think a man in business would work in a strike, is that it?

A. Yes, sir.

Q. This conversation that you had with him about the section gang and the train, that was all just supposition, isn't that right?

A. It was all brought up by myself, yes.

Q. It was all brought up by you?

A. Yes.

And you were just wondering what could happen, is that right?

A. Yes.

But Kneisley didn't say anything like that would Q. happen, did he?

A. No, he didn't.

Mr. Knoblock: That's all.

690 Redirect Examination by Mr. Heyl.

O. I want to ask you one more question: What, if anything, was said by Mr. Kneisley or by you with reference to the injunction?

. Mr. Knoblock: I didn't get that.

The Court: What, if anything, was said by Kheisley or by you with reference to the injunction?

Mr. Knoblock: I object as not proper redirect.

The Court: I think he may answer if anything was said.

He said if this was taken off, they could do something, otherwise they couldn't.

Mr. Heyl: That's all.

The Court: Just one question:

Did this man buy anything at all, or come in to talk?

He had a sandwich, pie and coffee.

The Court: He ate, and then the conversation ensued?

The Court: You never saw him before?

A. No. .

Recross Examination by Mr. Knoblock.

Q. With reference to doing something, they may have been putting more men on the picket line?

Mr. Heyl: I object to that. The Court: Oh, yes, sustained.

When they said they could do something, he didn't say what it meant?

Mr. Heyl: I object.

The Court: Was that the only conversation? What you have related, is that all that was said about the injunction?

A. Yes.

Did you know George Kneisley lived in Washington?

No. I didn't.

Mr. Knoblock: That's all.

692 CATHERINE RILEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name, please?

Catherine Riley.

Where do you live?

A. In Washington.

Are you the wife of the gentleman who just testified?

Yes. A. .

Q. And I will ask you if you were in your husband's restaurant last Thursday, January 8, 1942, when a strange man came in?

A. Yes.

Did you hear the conversation between your husband and this man?

A. I did.

Q. Do you see that man in the court room?

Yes. A.

Where is he? Tell where he is seated.

He's in the second row, and the second man from the aisle.

Is this the man you referred to (indicating)?

Is that the man? Q.

Will you tell the court just what you heard this man say to your husband, and what your husband said?

Well, he asked where Mr. Kipling lived, and Mr.

Riley told him he didn't know.

The Court: Speak up.

A. He asked where Mr. Kipling lived, and Mr. Riley told him he didn't know.

All right.

A. And he wanted to know if he run a gas store in town, and my husband told him he didn't know that, either, and he told about going up to see Homer and Homer had been sick, Homer Waughop, and that the men were scabbing on the railroad.

The Court: Who had gone up to see Homer? A. He himself.

Q. Go ahead.

A. And my husband asked him how the strike was coming along, and he told him they weren't getting anywhere, and that he was out here trying to find—see these mer, and Earl asked him— He said, "What about our section men going ahead of the train?" He said, "Why do you allow that?" He said they could soon settle them by stretching wires across if they wanted to take care of them.

Q. What else was said?

- A. Well, there was just general talk about the railroad situation.
- Q. What, if anything, did he say with reference to what would happen to Waughop's property? Did you hear that?

A. It would be demolished.

Q. By whom?

· A. He didn't say.

Q. What did he say about it?

A. That the strikers would take care of that.

Q. Was that the Waughop that was temporarily working for the railroad?

A. Yes.

694 Q. And runs a tavern near Washington?
A. Yes.

Q. Is that right?

A. Uh-huh.

Q. Were there any other T. P. & W. employees that he inquired about?

A. Well, about the two Widmers boys?

Q. What did he say about these two boys?

A. He understood they had stayed at the City Hall all night one night the week before while the strike was

going on because they were scared to go home.

Q. Is that what he said? Kneisley said to you?

A. Yes.

Q. Now, what did he say with reference to the injunction?

A. Well, he said their hands were tied, they couldn't do anything as long as the injunction was on.

Q. What did he say would happen if they got it loose? A. If they were loose, then they could go ahead and do whatever they pleased.

Q. Is that what he said?

A. Yes.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mrs. Riley, what time were you sitting in the court room here today?

A. I wasn't sitting here.

Q. Weren't you in the court room this morning?

A. No.

Q. Weren't you in the court room part of this afternoon?

695 A. No.

- Q. What time did you come here today?
- A. I came here between 3 and 3:30.

Q. This afternoon?

A. Yes.

Q. And you are sure you were not sitting in this court room this morning?

A. I was not.

Q. Did you know George Kneisley lived in Washington?

A. No.

Q. You have never known the man over there?
A. I have only seen him once before as I know of.

Q. Where did you see him?

A. In the restaurant. Q. In the restaurant?

A. Yes.

- Q. He had come in to your restaurant on another occasion, is that right?
 - A. Not as I know of; only once before. I served him. Q. How well does your husband know Homer Waughop?

A. He's a very personal friend of him.

Q. Homer Waughop is the man that runs this Casino east of town, is that right?

A. Yes.

Q. And now, when Mr. Kneisley and your husband were talking together, your husband asked Mr. Kneisley, did he not, how they could do anything to a train with the section crew running in front of it? He asked about it?

A. Yes.

696 Q. Mr. Kneisley didn't say they were going to do

A. He said when the time came they would handle the situation.

Q. Your husband heard the same thing as you did?

A. Yes.

Q. Due to your friendship with Homer Waughop, you folks were quite concerned, weren't you?

We were. A.

You immediately told Mr. Waughop, I assume? Mr. Riley notified the proper authorities.

Did you tell Mr. Waughop?

I don't know if he told Mr. Waughop personally or not.

Were you present when your husband notified the Q. proper authorities?

I heard him. A:

Whom did he call?

Our night watchman.

Q. A. In Washington?

Yes.

Did your husband notify anybody eise?

Not as I know of.

He did notify Mr. Waughop?

Not as I know of.

Mr. Heyl: She didn't say that.

Mr. Knoblock: I am just asking her.

Mr. Heyl: You said she said she said it. Did your husband notify Mr. Waughon?

Mr. Hevl: Objected to as answered. The Court: She answered.

A. Not as I know of, he did not. 697f

How frequently does Mr. Waughop come to your restaurant?

Mr. Waughop comes to the restaurant every time that he gets a chance to, to chat.

Do you people go to his tavern and casino?

We have been frequently.

How many years have you been associated in that manner?

A. I have known him ever since I have lived in Wash-

ington; eight years.

Your friendship with Mr. Waughop is very close and sincere, is that right?

A. It is.

When did your husband notify the night watchman? When the night watchman came into the restaurant. A.

That was on January 9? A. It was on Thursday evening.

Q. On that same Thursday evening? A. Yes.

Q. Then your husband did talk to someone prior to last night about this, is that right?

A. He did. It was prior to last Thursday night,-

not prior.

Q. What was that last?

A. It wasn't prior to last Thursday night, and last Thursday night he talked to the night watchman, and told it to several of the railroad authorities since that time, but not last night.

Q. You say your husband talked to somebody about

this prior to last Thursday night?

A. No, he did not.

Q. But he did talk to several railroad authorities 698 prior to last night?

A. Yes, he did.

Q. Do you know whom he talked to?

A. I am not certain who he talked to.

Q. Give us your best judgment.

Mr. Heyl: I object.

The Court: Did you hear him talking to somebody?

A. I heard him talking to one of the men last night.

The Court: Who was that?

A. I believe George Mahle, one of the old railroad employees.

Q. Prior to last night, whom did your husband talk

to about this?

Mr. Heyl: If you were present.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. Were you subpoenaed to come here as a witness?

Q. Were your witness fees paid and tendered to you?

A. Yes.

Mr. Heyl: That is all.

699 LLOYD E. McAVOY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. Lloyd McAvoy.

Q. Where do you live, Mr. McAvoy!

A. 110 Sheen Avenue, East Peoria.

Q. How old are you? A. Forty years old.

Q. What is your business?

A. I'm a fireman on the road.

Q. For what road?

A. T. P. & W.

Q. Were you on duty on January 2, 1942?

A. Yes, sir.

Q. What time did you go on duty that day?

A. I went on duty, if I remember right, at 6 o'clock that morning.

Q. Were you a fireman on a train leaving Peoria that day?

A. Yes, sir.

Q. Do you remember the number of the train?

A. Extra 41-

Q. West?

A. -west.

Q. Running from Peoria to what point?

A. To Hamilton.

Q. Who was your conductor?

A. A man by the name of Sweet.

700 Q. And who was in the engine with you?

A. I beg your pardon! It wasn't Sweet that was conductor. It was Taylor, Dick Taylor.

Q: Who was the engineer?

A. Omar Gulick.

Q. Do you know a man by the rame of E. R. Funk!

A. Yes, sir.

Q. Was he on the engine also?

A. Yes.

Q. Did you have an apprentice fireman?

A. Yes, sir.

Q. What was his name?

A. Jimmy O'Brien.

Q. What time did you leave the yards in East Peoria?

A. About 7:20, I think, possibly.

Q. And about how many cars did you have as you left the yards?

A. Well, I wouldn't know how many cars we had.

Q. Was there anything that occurred out of the ordinary as you left the yards until you got into Peoria?

A. Not a thing.

Q. When was the first place anything out of the ordinary occurred as you proceeded westward?

. The first thing was down by the Star Model Brewery

in the yards.

Q. About what speed was your train moving at that time?

A. I should judge about fifteen miles an hour.

Q. Who was running the engine at that particular time?

A. Mr. Funk was running the engine at that particular time.

Q. Where was Engineer Gulick?

A. He was standing behind Mr. Funk, I think.

701 . Q. Where were you?

A. I was down on the deck taking care of my engine.

Q. That is the deck between the engine proper and the tender?

A. Yes, that is right.

Q. In the position you could fire the engine?

A. That's right.

Q. As you were proceeding along near the Star Model

Brewery, what, if anything, occurred?

A. Somebody threw a slug of molding sand at Mr. Funk, which hit him on the chest and glanced off and fell on the desk of the engine.

Q. What effect did that have upon Funk?

A. It kind of dazed him, knocked his wind out a little bit.

Q. Did you see the party that threw that?

A. I did not.

Q. Did you see the thing that was thrown in after it landed on the engine?

A. I did, yes.

Q. Describe it as near as you can.

A. I would say it was about, possibly, four inches long, and I imagine it's about eight inches 'round, just a core from a cylinder, from a poured cylinder.

Q. What, if anything, happened to the engine or the

windshield of the engine at that time?

A. I don't remember of anything happening right there.

Q. Did the train proceed on from that point?

A. Yes. sir.

Q. Where did you stop next? You didn't stop at this

point, did you?

702 A. No, sir, not as I remember. The next stop we made was down at the M. & St. L. crossing, I think they call it.

Q. What did you notice there, if anything?

A. I saw some fellows out on the road there, but I didn't recognize any of them. In fact, I didn't know any of them.

Q. Were there any automobiles there?

A. Of course, there was some cars around there, but I didn't pay no attention to them.

Q. What did you see these people do that you saw

out on the road?

A. I can't say they was doing anything, only going up and down talking.

Q. Did you proceed on from there?

A. Yes, sir.

Q. Where did you stop after that?

A. Well, we went on down there about two thousand feet from the American Milling Company, and that is where they threw their stones and their bottles.

Q. Tell what occurred about two thousand feet below

the Milling Company.

A. Mr. Gulick was running the engine at that particular time, and Mr. Funk was over showing this Mr. O'Brien how to pull that pop-off valve on the engine, and all at once it sounded like a bunch of machine guns or something broke loose, and glass began to fly.

2. Where from?

A. From the glasses of these cabs, and rocks began to come in to who laid the chunk.

Mr. Knoblock: I object.

The Court: What is the objection?

Mr. Knoblock: "To who laid the chunk."
The Court: That is a farmer expression!

Mr. Knoblock: I don't think it is proper.

I am serious about that.

The Court: I don't think it hurts or helps you.

Q. Go on!

A. There were two bottles of some kind of fluid that exploded mighty quick that came in the cab. One hit Mr. Gulick on the breast as it came in. It glanced off and hit on the engine and bursted and ran down in front of the fire box, and came right up with a blaze of fire. When this bottle broke on this side of the engine boiler here, it also sprayed Mr. Gulick with the liquid.

Q. What occurred then?

A. And then when it got set off from the fire box, I presume,—

Mr. Knoblock: I object.

The Court: Yes, state what happened.

Q. Tell us what occurred.

A. I know the fire started down at the firebox, and it came right up. The cab was just a mass of fire, and Mr. Gulick was fire all over, and he was trying to shut the engine off and fight fire, all at the same time, and I was down on the deck at the time, so I had some coal dirt there, slack, that I just covered the deck and put the fire out.

Q. What happened with reference to the stones coming

in at about the time the bottles were thrown in?

A. They never stopped. They just kept on coming in.

Q. What is your best judgment, if you have a judgment, as to the number of stones that were thrown in there?

A. Well, I don't think I would try to guess. Some of the boys were good shots, some were poor. A lot of 704 them hit the tender of the engine, and a lot of them come on through.

The Court: Read the question to him.

(Question read by reporter.)

The Court: In the cab.

A. Do you mean in the cab?

Q. Yes.

A. I would say anyhow a peck of them.

Q. What were the sizes of these stones that came in? A. They varied; all sizes from half bricks on down.

Q. Did you notice these bottles after they were thrown in broken? What kind of bottles they were?

A. They were, I would say, half pint bottles. We picked

up a lot of glass and the caps of them.

Q. Did both of them explode when they came in there?

A. Yes sir.

Q. What happened to the train after Mr. Gulick was set afire?

A. We slowed the train and stopped it, and got the

fire put out, and went on our way.

Q. Was there a special agent by the name of James in there that day?

A. Yes, there was.

Q. What happened to him while this barrage was going on?

A. He stopped one of those stones, I presume.

Mr. Knoblock: Objection.

Q. What happened to his hand?

A. He got his hand cut and a big gash. They told me it took thirteen stitches to sew it up.

Mr. Knoblock: I object.

The Court: Objection sustained.

705 Q. What side of the engine was it you spoke of about Mr. Funk arranging to have the blow-off—

A. That was the left hand side.

Q. That was the side toward the river, and away from the highway?

A. That's right.

Q. Does the railroad run close to the highway at that point?

A. Very close.

Q. Is it on the same level, or lower than the highway?

A. It is lower. I would say it is about eight feet lower.

O. As you went along there can you tell how many men

Q. As you went along there, can you tell how many men there were, approximately, throwing stones?

A. I would say there were twenty-five or thirty men

out there in that gang.

Q: Were you able to recognize any of them?

A. No, sir, I don't know any of them.

Q. After the engine had been stopped, who took charge of the engine to move on?

A. I think Mr. Gulick took the engine and went on.

Q. Was Mr. Funk in the engine also?

A. Yes, sir.

Q. While this was going on, did you hear any revolver shots or gun shots?

A. No, I didn't.

Q. Did you see anybody in the cab having a gun or using it?

A. No, I didn't see anybody having the gun.

Q. Or displaying it?

A. No. sir.

- Q. Was there any gun displayed in that cab that day?

 A. Not that I know of.
- 706 Q: You were right there where you could see?

A. Yes, sir.

Q. Was the train molested again after this place about two thousand feet below Allied Mills?

A. No, sir.

Q. What became of the special agent?

A. We stopped the train this side of Mapleton, and he was taken out and put in a car and taken to the hospital, I guess.

Q. You didn't see him after that?

A. No, sir.

Q. Were you on extra 43 on December 31 running-

A. No, I wasn't on that train. Q. You weren't on that train?

A. No.

Q. Were you on extra 417

A. That's right.

Q. Tell us what occurred on that day, and where.

A. On extra 41 December 30 we got clear over here to this side of Sciota, and had some rocks thrown at us there, and we stopped at Sciota and did some switching and set a car, and just as we were leaving town we were again showered with rocks, and then I know we got rocked that evening at Taber crossing this side of Hamilton, and we may have been rocked once more, but I can't remember the place.

Q. You put up at Hamilton for the night?

A. That's right.

Q. Did you come back the next day?

A. Yes, we did.

O. What, if anything, occurred on your way back?

707 A. Nothing happened until we got to Swords' coal yard coming back.

Q. Is that just east of the Illinois River?

A. Yes.

Q. What occurred there?

A. They threw some rocks that night on the right hand side of the engine.

Q. Did you see who it was that threw them?

A. No, sir, I did not.

Q. Did you observe any men that were throwing them?

A. No, I didn't.

Q. What called your attention to the fact the rocks were being thrown?

A. You can hear them, all right.

Q. And you did that night?

A. That's right.

Mr. Elliott: You may cross examine.

Cross-Examination by Mr. Knoblock.

Q. How long have you lived in East Peoria, Mr. Mc-Avoy?

A. Off and on for the last fourteen years.

Q. You say all your life but fourteen years?
A. I said off and on the last fourteen years? I have

been there.
Q. How long have you been employed by the T. P. & W.1

A. I went to work for them December 30.

Q. 19411

A. That's right.

Q. Where had you been employed before that?

A Working on construction work.

708 Q. Working for whom? A. C. D. Wagstaff.

Q. Where is he located?

A. Evanston, Illinois.

Q. Evanston!

Q. Had you ever had any railroad experience before!

A. I worked on the railroad back in 1919.

Q. How long did you work on the railroad then?

A. I think I was at it about four months, if I remember right.

Q. What road work for?

A. I can't ever to that. It was out of Mason City, Iowa, and whether it was the Great Western or the Great Northern I don't know.

Q. Outside of that four months' experience, had you

ever worked for any milroad?

A. That's right; I never had.

Q. On this day of December 30, you went out as a full-fledged fireman, is that right?

A. That's right.

Q. How much were you paid?

A. I was paid \$7.40 for the first hundred miles, and \$10.00 a day bonus.

Q. Did Mr. Best promise you that?

A. That's right.

Q. How long did he offer to pay you that bonus?

A. He didn't offer any time limit to it that I know of.

Q. On the date of January 2, 1942, you say you went on duty in the East Peoria yards about 6 A. M., is that right?

709 A. That's right.

Q. What was the name of that train, or what was it called?

A? That was the extra 41 west.

Q. Who was the engineer?

A. Omar Gulick.

Q. Who was the conductor?

A. Ed Taylor.

Q. Who? A. Taylor.

Q. What is his first name?

A. Ed, I think.

Q. Do you know where he lives?

A. No, I don't know where he lives.

Q. You say you have been living in East Peoria off and on for the last fourteen years? Where have you lived in the last fourteen years outside of East Peoria?

A. I have lived in Peoria, I have lived in Macomb, and

I have lived at Plymouth,

Q. Is that all?

A. Yes.

Q. How about Evanston?

A. I never lived there.

Q. You never lived there?

A. No, sir.

Q. You had an apprentice fireman on there by the name of O'Brien?

A. That's right.

Q. You were teaching him how to fire?

A. He was on there to make his student trip.

Q. You left the yards about when?

710 A. We are talking about January 27

Q. January 2.

1. I think we left the yards about 7:20.

Q. And who all was in the cab of that locomotive out-

side of the men you have named here?

A. Well, there was Mr. Funk in that cab, Mr. Gulick, myself, Mr. O'Brien, and this man James that got his hand hurt.

Q. Anybody else!

A. There were two other men on there that I don't know either one of their names.

Q. How many?

A. Two.

Q. Isn't it a fact there were four special agents in there that morning?

A. There might have been, as far as I know.

Q. But you don't recall it?

A. I don't know their names.

Q. Did all those men carry guns?

A. I didn't see any guns.

Q. You never saw any guns?

A. That's right.

Q. You rode with them all the way from East Peoriato Hamilton, Illinois?

A. No, I think not. We lost Mr. James when he got

his hand hurt at Mapleton.

Q. I think that is right, but the other three men went all the way?

A. I think one man was taken off the cab at Canton

that day.

- Q. Did the other two ride all the way through with you?

 A. I think they did.
- 711 Q. Did you see them have any holsters?

A. I never noticed any guns.

Q. At this Star Model Brewery in Peoria, you didn't see anybody throw anything there, did you?

A. That's right.

Q. You don't know who threw anything? You didn't see them throw it?

A. I didn't see them throw it there. I saw plenty down

below.

Q. I will get down there. You say you saw some men standing at the Star Model. How far—

A. At the crossing. I wouldn't say how far they were from the track.

Q. What is the distance, to your best judgment?

A. I wouldn't say they were over twenty-five or thirty feet from where the track was going—the train was going.

Q. You didn't—wouldn't recognize them now, and don't now, as having been former employees of the T. P. & W.?

A. No. I didn't.

Q. This object that you saw come in and strike Mr. Funk, how much would you say that would weigh?

A. Four pounds.

Q. When you got down to the M. & St. L. crossing, you say you saw some fellows out there, but they didn't do anything?

A. I didn't see them do anything. In fact, they didn't

do anything at the engine.

Q. Isn't it a fact you thumbed your nose and shook your fist at these men at that point?

A. That is not true.

Q. That is not true?
A. No. it isn't.

712 Q. Mr. Gulick didn't do that, either?

A. Not that I know of.

Q. Down at the Allied Mills, did you see one of the special agents get down out of the cab of the engine there?

A. Well, I don't remember of anyone getting out of

the cab. They could have done it very easy.

Q. You didn't see anyone go down there and pull his gun? Or pull his coat back and display his holster, and put his hand on his gun, did you?

A. No, I didn't.

Q. You didn't hear any conversation there, either?

A. That's right. I never heard a word.

Q. Not a word was said? About two thousand feet south of the Allied Mills, Funk was instructing whom concerning the blow-off cock?

A. O'Brien.

Q. And that engine had a blow-off cock on both the left and right sides, didn't it?

A. That's right.

Q. And the blow-off cocks were turned on, and then you noticed rocks start to fly, isn't that right?

A. There was plenty of rocks. I don't know whether

the blow cock was turned or not. He was telling Mr. O'Brien.

Q. It is your best judgment the blow cock was not turned off at any time?

Mr. Heyl: I object. He answered that.

The Court: He may answer. Do you know whether it was turned on or not?

A. I would say it was turned on.

713 The Court: Go ahead!

Q. Was it turned on on both sides?

A. No, sir.

Q. Which side was it turned on?

A. It would be on the left hand side of the engine.

Q. Just shortly after that blow-off cock was turned on, that is when you first noticed the rocks?

A. They came in there all at this same time.

Q. And when the blow-off cock is turned on, it expels and throws out quite a bit of hot water and steam, doesn't it?

A. I imagine it does,

Q. And anybody struck with that could be pretty badly;

burned, couldn't they?

A. I don't know whether it would scald anyone or not. I would think not unless they would be standing up next to it.

Q. It would be hot?

Mr. Heyl: I object. Lots of things are hot.

Mr. Knoblock: This water and steam.

The Court: He can answer. I would say to you it would. be hot!

A. It wouldn't burn anybody unless they would be on the right-of-way of the railroad, I would say.

Q. After the rocks started coming, you saw a bottle

thrown in there, is that right?

A. I saw the bottle when it hit in the boiler. I didn't see it thrown in.

Q. You didn't see anybody throw rocks or bottles?

Yes, I saw them throwing rocks that day.

Q. Did you know who they were!

714 A. I did not.

Q. You didn't know then, and you don't know now, do you!

A. That's right.

Q. Did you on that occasion, then, see any of these special agents draw their guns and start shooting?

A. No, I didn't.

Q. Did you see any of the special agents shoot through the curtain of the cab?

A. I did not.

Q. Did you see or smell any of the smoke coming from the powder explosion?

A. I did not.

Q. On this extra 41—what is that, east or west?—on December 30, 1941—

A. December when?

Q. December 30, 1941, is extra 41-

A. West.

Q. You say that there was rocks thrown at Sciota, Taber crossing, and you don't know who threw those?

A. That's right.

Q. You didn't see them thrown?

A. No, sir.

Q. And then on December 31, 1941, at Swords' coal yard you didn't see any rocks thrown there?

A. No.

Q. You didn't recognize anybody around there!

A. No.

Q. How many special agents did you have coming into Peoria that night?

A. I don't remember. I couldn't answer that:

Q. You had some, though, didn't you?

A. I think probably there were one. There might have been two.

Q. Was he armed?

A. Not that I know of.

Q. As these rocks come in there, who was sitting on the right side of the cab in front?

A. At which particular place?

Q. . Two thousand feet below the Allied Mills.

A. Well, I don't know whether anybody was sitting or not. Mr. Gulick was there, but whether he was sitting or standing, I wouldn't sweer to it.

Q. Who was behind him on his side?

A. That is where the special agent, James, was standing.

Q. Where were you at that time?

A. I was on the deck taking care of my engine:

Q. Where was Funk?

A. On the other side, instructing this man how to work the blow-off.

Q. That would be on the left side?

A. Yes.

Q. And the apprentice fireman was over there, too?

A. That's right.

Q. Where were the other three special agents?

A. Well, I think possibly—

Q. Do you know where they were?

A. Well, they were around in there. I don't know just particularly where they were at.

Q. Did everybody keep their post?

716 A. Well, I guess they did. They was all in the cab. None of them jumped out.

Q. Were they out in the gangway, these three special

agents?

A. Well, they were all around in there. I don't know.

Q. The gangway is opposite the curtain, isn't it?

A. Well, it all depends on what you call the "gang-way". I call the gangway from the firebox to the tender, It is all deck down there.

Q. Part of the gangway is opposite the curtain then?

Mr. Heyl: What do you mean by "gangway"?

Mr. Knoblock: He called it "gangway". You should ask him yourself.

The Court: Let's get away-

Q. Part of that gangway was opposite the curtain?
A. It runs from your boiler of your engine to your ten-

A. It runs from your boiler of your engine to your tender.

Q. Is part of the gangway opposite the curtain or not?

A. I guess it could be, yes.

Q. Who was the brakeman on the train that day?

A. Well, I know his face, but I can't call his name.

Mr. Knoblock: I think that's all.

The Court: Is that all? Call the next witness.

717 CARL JAMES, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Carl James.

Mr. Knoblock: I didn't hear it.

A. Carl James.

Q. Can't you speak louder?

A. Carl James.

Q. Where do you live?

A. Bushnell.

Q. What is your business or occupation? A. Garage mechanic.

A. Garage mechanic. Q. How old are you?

A. Forty-one.

Q. How long have you lived in Bushnell?

A. About six years.

Q. Where did you live before that?

A. Tulsa, Oklahoma.

Q. Were you in the employ of the T. P. & W. Railroad the last week of December?

A. Yes, sir.

Q. This last year?

A. Yes, sir.

Q. When did you begin your employment with the T. P. & W.?

A. About two weeks ago.

Q. What day of the week? Do you recall, Mr.

718 A. Monday, I believe.

Q. That would be December 29, 1941?

A. Somewhere along there. Q. Two weeks ago today!

A. About two weeks ago today.

Q. What trains did you travel on during the time that the strike was on, and before the restraining order was

A. Well, I don't know just when the restraining order was on.

Q. A week ago Saturday?

A. A week ago last Saturday?

Q. Yes. What trains were you operating before that?

A. I made two trips to Hamilton.

Q. On what days? Do you remember? A. On Monday and Wednesday, I believe.

Q. Were you on the train that had the glass bottle incident down at Hollis?

A. Yes, sir.

Q. This side of Hollis?

A. Yes.

Q. That was on January 2, on Friday, is that right?

A. Right.

Q. That was the second train you were on?

A. That was the third train.

Q. And then you were on one what day? The 30th?

Mr. Knoblock: I think he should pick the train. The Court: Yes, let him tell.

Q. Let's get down to this train on January 2, 1942. Where were you riding on that train?

A. In the caboose.

719 Q. And what position did you have on the train?
A. Guard.

Q. Special agent?
A. Special agent.

Q. And what happened after you left East Peoria, before you reached the place where this stoning took place?

A. Well, nothing in particular.

·Q. When you got down to the American Milling, was there something there after switching had been completed? Did something happen there?

A. At the Allied Mills?

Q. At the Allied Mills.

A. Yes.

Q. What was it?

A. Well, as we started to leave there, we got about, oh, I would say—

Q. A little louder, please.

A. A quarter of a mile west of the switch, I started to get up behind the engineer, thought I would stand behind the engineer, and I reached over and got hold of the arm rest to steady myself, and about that time something hit my hand. I don't know what it was. I didn't see.

Q. Which hand? A. My right hand.

Q. Where did you have your right hand?

A. On the arm rest.

- On the outside of the engine?
- On the outside of the engine.

Q. On the engineer's side?

720 On the engineer's side.

Just before you received that injury, did you see anyone along the road?

No, I was back in the cab.

Did you see anyone standing on the highway, or near the right-of-way at that time?

No, I was back in the cab, and the curtains was

drawn.

Did you see anyone along there at any time? Q.

There was some men at the switch when we were switching.

Were you in the cab when this bottle was thrown?

I was in the cab when the fire broke out there. didn't see what it was.

You didn't see the bottle?

No.

When was that with reference to the time you got your hand injured?

A. Just after.

Just afterwards?

Just afterwards.

Q. What happened to your hand?

A. It broke it in seven places.

Q. Your right hand? A. My right hand.

Will you tell what the injuries are?

Mr. Knoblock: I object.

The Court: If he knows, he may tell.

I wouldn't know. A.

Did you go to the hospital?

A. Canton Hospital; Graham Hospital.

How long were you in the hospital as a result Q. of that injury?

A day and a half.

Who treated you?

Dr. Shallenberger. A.

Is your hand in a splint now? Mr. Knoblock: I object; immaterial. The Court: What is the objection?

Mr. Knoblock: Immaterial; doesn't prove anything. The Court: It is part of it. He says he is hurt, and was

in the hospital.

Q. Will you show the court your hand?

The Court: I can see it. I think it is immaterial. You don't need to go into the particulars, but he was injured.

Q. Did you have any surgery performed on your hand

as a result of this injury?

A. Yes.

Q. What?

A. They set my finger and hand, and sewed it up.

Q. How many stitches did they take?

A. Twelve.

Mr. Knoblock: Objection.

Q. What part of your hand is broken and in splints?

A. That finger broken (indicating), and six places here.

Q. Can't you tell what finger it is?

A. The middle finger.

Q. That is where the middle finger is?

A. Yes.

Q. Where did you leave that train that day?

722 A. At Mapleton, I believe.

Q. And were taken to Canton from that point in an automobile?

A. Yes.

Q. Did you use your gun that day in any manner?

A. No.

Q. Did you have it out of your pocket at any time?

A. No, sir.

Q. Did any of the men you saw on that train have any guns out of their pockets or in their hands?

A. No, sir, I didn't see any.

Q. Did you see or hear any shooting?

A. I heard him shooting.

Q. Where was that?

A. I couldn't tell. I was pretty busy with this hand.

Q. Was there anyone near you?

A. I couldn't say. There was so much noise and confusion—

Q. Did you see anyone on that train or any train you were on during this strike exhibiting a gun, or flourishing a gun, or using a gun?

A. No, sir.

Q. Did you at any time-

A. No, sir.

Q. -use a gun or have it outside in plain view-

A. No, sir.

Q. —when any of these incidents occurred?

No, sir, we had strict orders.

What were your orders?

We had orders not to use them. Q. Who gave you those orders?

723A. Mr. Kipling.

That was the chief special agent?

A. Chief special agent.

Have you been able to work since this happened?

No. sir.

Can you use your right arm?

I can use my arm, but not very well.

I can't hear you. A. Not very well.

The Court: Cross-examine.

Cross-Examination by Mr. Knoblock.

What garage did you work at down at Bushnell, Mr. James, prior to taking employment with the T. P. & W. ?

Madison.

The name is just the Madison Garage?

Madison Garage. A.

How long had you worked there?

Three years.

What other employment had you had in Bushnell prior to this?

More garage work. A.

Where at?

Ball Garage.

What? Q.

Ball Garage.

What was your employment down in Tulsa, Okla-Q. homa?

A: Oil field.

How long were you in the oil fields? Q.

724

A. About twenty years.

Q. How long had you known Kipling prior to your going to work for the T. P. & W.?

Oh, I would say five years.

And how much pay, were you offered here as a guard?

Hundred and fifty a month.

And were you given any bonus on top of that?

Not that I know of.

Q. And what were you making down here at this garage in Bushnell?

Mr. Heyl: I object to that as immaterial.

The Court: Oh, he may answer.

A. \$25.00 a week.

Q. Who gave you the gun you carried on this date, January 2, 1942?

A. Mr. Kipling?

Q. Who?

A. Mr. Kipling!

Q. Did he furnish the bullets, too?

A. I think so.

Q. You had the gun on you that day?

A. Yes, sir.

Q. Where did you carry it?

A. In the holster.

Q. Right outside of your coat?

A. In the open.

Q. Outside?

A. Yes.

Q. And in plain view?

A. Yes.

Q. It wasn't hidden?

725 A. It was probably under my overcoat.

Q. But under your overcoat it was in plain view!

Mr. Heyl: I object. He answered. The Court: Yes.

Q. Did you have your overcoat open this day?

A. I couldn't say. I don't remember.

Q. Did you ever have the gun out of the holster that day?

A. No, sir.

Q. What calibre gun was it?

A. 38, I believe.

Q. What kind of bullets did it have? Dum-dum bullets?

A. I never looked at it.

Q. They were snub-nosed bullets?

A. I couldn't say. I'never looked at them.

Q. How many special agents were there in this cab on this particular day of January 2, 1942?

A. Four, I believe.

Q. Do you know who the other three were?

A. No. I don't.

Q. Did they all carry guns?

A. I couldn't say. I didn't see them.

Q. Have you ever had any experience using firearms before?

A. Yes, sir.

Q. Have you ever acted as a guard before?

A. No, sir.

Q. Have you ever acted as a special agent before?

A. No, sir.

- Q. Had you ever had any police experience before?
 A. Yes.
- 726 Q. Where?

Q. How long were you on the Tulsa police force?

A. At one time about eight months.

Q. About what year was that?

A. 1928.

Q. Do you now, and did you on January 2, 1942, carry any commission to carry a gun?

A. Only special agent.

Q. And that was the authority that Kipling gave you, is that all? Just called you "special agent," and gave you a gun, is that right?

A. Yes, I suppose.

Q. You say you made two trips to Hamilton on Monday and Wednesday prior to the fact in question of January 2. Did you carry a gun on both of those occasions?

A. Yes.

Mr. Elliott: Objected to as immaterial.

The Court: He has answered.

Q. Did you have any occasion to use them on those two trips?

A. I don't think so.

Q. Nothing eventful happened on those two trips?
A. Oh, a few bricks thrown, something like that.

Q. Do you know where and when?

A. No, I couldn't say exactly. Q. What?

A. I couldn't say exactly just where.

Q. Did you know the names of these other three special agents in there with you?

727 A. No, I don't. They were all strangers. Q. Do you know where they came from?

A. One was from Bushnell.

Q. Who was that?

A. I believe his name was Kane. Q. How long have you known him? A. Oh, maybe a year.

Q. What was his work in Bushnell prior to going to work for the T. P. & W.?

A. I can't say. I just know him when I see him.

Q. You just know him to see him?

A. Just know him to see him.

Q. At the Allied Mills plant there on Bartonville road, do you recall one of your special agents getting out of the cab, and going down on the ground?

A. I didn't.

Q. Did you see Mr. Kipling order one of the men down there?

A. No, sir.

Q. Did you see one of the men go down there?

A. I don't remember. I know I didn't. I never did leave the engine.

Q. Did you see one of your guards pull his coat back, exhibit his gun, and put his hand on the butt of it?

A. No, sir.

Q. You never saw any violence at the Allied Mills?

A. No, sir.

Q. There was none there?

A. Not to my knowledge.

Q. You were there all the time?

A. I was in the cab of the engine.

Q. You were in the cab of the engine?

A. Yes.

Q. Did you see Engineer Gulick and McAvoy and some of the men in the cab shake their fists at the men on the side of the road, and say, "Hello, sucker"?

A. No, sir.

Q. You never saw them thumb their noses, or do anything?

A. No.

Q. As you went west of the Allied Mills for about a quarter of a mile, Mr. Funk was assisting O'Brien in letting or putting on the pop-off cock, wasn't he?

A. I couldn't say.

Q. Blow-off cock, I mean. Did you see that?

A. I don't remember whether he did or not.
Q. Did you hear it?

A. Not to my knowledge I don't remember hearing it.

Q. While you have ridden on these trains on these trips, have you ever heard the blow-off cock put on?

A. Yes, sir.

Q. It makes quite a noise, doesn't it?

A. Quite a noise, yes.

Q. Where this fracas occurred there about a quarter of a mile west of the Allied Mills, the two blow-off cocks had been turned on just prior to the first shower of rocks?

A. I couldn't say whether they were or not.

Q. You have knowledge about an engine sufficient to know when those blow-off cocks are turned on, anyone standing within several feet of that will get burned, or 729 the water is very hot? You know that?

Mr. Heyl: I want to object as not cross-examination.

I asked him nothing about this blow-off cock.

The Court: If it is the same occurrence—but I think we can concede, I think, it would hart a little.

Q. Do you know that? A. I think that he did.

The Court: Go ahead! What's the next one?

Q. After the pop-off cocks or blow-off cocks were turned on, the rocks started coming in, is that right?

Mr. Heyl: I object to that.

A. I don't remember.

Mr. Heyl: He said he didn't remember.

The Court: Objection sustained.

Q. Who was on the right front side in the cab of this locomotive when these rocks come about a fourth of a mile west of Allied Mills?

A. The engineer.

Q. Who was behind him?

A. I don't think there was anyone.

Q. There was no one behind the engineer?

A. No, sir.

Q. What side of the cab was the engineer on?

A. Right side.

Q. At that time where was Mr. Funk?

A. I think he was down in the cab on the floor.

Q. On the floor?

730 A. Standing.

Q. You mean standing on the floor?

A. I think so.

Q. Where was apprentice fireman O'Brien?

A. I couldn't say.

Q. Did you recognize a man on the train by the name of McAvoy! Did you know a man on there by that name?

A. I don't believe I do.

Q. Who was the brakeman?

A. I couldn't say. They were all strangers to me.

Q. Where was Fireman O'Brien when this attack of stones came?

A. I couldn't say exactly.

Q. Where were the three other special agents than yourself at that time?

A. They were standing on the floor in front of me. I was

back next to the tender after my hand was hit.

Q. They were back there near where the curtain was drawn?

A. They were in front of me.

Q. And by the curtain?

A. They was pretty well crowded in there. I didn't notice just where they were.

Q. And it's a fact, isn't it, that those agents started fir-

ing through that curtain on that occasion f

A. I couldn't say.

Q. You say you couldn't say?

A I couldn't say.

Q. They might have been firing through it?

A. I heard some shots.

Mr. Heyl: I object to what they might have been 731 doing.

The Court: Do you know anything about it?

A. I heard some shooting.

The Court: Is that all you know about the firing?

A. That's all.

The Court: Go ahead?

Q. Did you know that there were four other special agents on that train besides yourself and the ones in the cab?

Mr. Heyl: I object as already answered.

The Court: I think he answered. I am not sure. Did you know?

A, I did.

Q. Where were they located?

A. They were in the cab.

Q. That isn't what I asked you. I said besides the four in the cab, did you know there were other special agents?

A. No, I don't know how many there were on there.

Q. But you knew there were others?

A. No, I didn't.

Q. As you left the East Peoria yards, where were you riding in the train?

A. In the engine.

Who was in charge of the special agents on this trip on the train?

A. Well, no one, I don't suppose. Mr. Kipling, I reckon.

Q. Kipling wasn't along. Did he place any of you men in charge?

A. No, sir, not me.

Who met you in Mapleton?

I couldn't say what his name is. He is a special agent. When did you last see Kipling?

732 A: When?

On this morning of January 2,

A. At his office.

About what time?

I would say 8 o'clock.

Was there any other guards there with you at the Q. time?

Several. A.

How many guards were there altogether at that Q. time?

I would say there was five or six around there.

Mr. Knoblock: I think that's all.

The Court: Is that all with this witness? Mr. Heyl: Just one question.

The Court: We will take a five minute recess, gentlemen.

(Recess.)

733 LELAND RUDDELL, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

Leland Ruddell.

Mr. Knoblock: What?

A. Leland Ruddell.

Mr. Knoblock: Leland Ruddell?

Q. Your last name, R-u-d-d-e-l-l?

A. Yes.

And your middle initial is "H"? Q.

A.

And you live at Hamilton, Illinois?

Hamilton.

Q. What is your business or occupation?

A. Brakeman for the T. P. & W. Railroad Company.

Q. Were you on train 41 west January 2, 1942?

A. I was.

Q. And in what capacity were you serving on that train?

A. Brakeman.

Q. Front brakemna or rear brakeman?

A. Front brakeman.

Q. You call that the "head brakeman"?

A. The head brakeman.

Q. What time did your train leave that morning?

A. In the neighborhood of 7:40.

Q. Where were you riding upon that train?

A. On the engine.

734 Q. What happened between the Union Station and Hollis, before you reached Iowa Junction?

A. Got a few rocks throwed at us.

Mr. Knoblock: Where at, now?

Mr. Heyl: I am going to ask that next question now.

Q. Where did you receive these rocks?

A. Not being familiar down through the yards, I couldn't just exactly say.

Q. Do you remember reached the Allied Mills siding?

A. I do.

Q. Do you know where that is located?

A. Yes, sir.

Q. Did you see anybody there that you knew, outside of your train crew?

A. Well, nobody that I could recognize and swear to it.

Q. Did you see any men there that were formerly connected with the T. P. & W.?

A. I did.

Q. Where did you see them?

A. On the highway.

Q. And how many of them?

A. Oh, I wouldn't say exactly. I expect there was twenty or twenty-five at that point.

Q. Were you riding in the engine at any time when the occupants of the cab of the engine were stoned?

A. I was.

Q. Who was struck? A. Ernie Funk.

735 Q. And did you see the man that threw that article at him?

A. I did not.

Q. Where did it strike Funk?

A. Right on the shoulder, as he explained it to me later.

Q. Did you see where it struck him?

A. I didn't see it. As he explained it to me, -

Mr. Knoblock: I move the testimony be stricken.

The Court: That part may.

Q. Where were you when he was struck?

A. In the left hand side of the engine.

Q. Did you hear anything?

A. Only the noise of the rocks hitting the engine.

Q. West of the Allied Mills switch, did something happen somewhere around two thousand feet west of that. Allied Mills switch?

A. It did.

Q. Where were you at that time?

A. On the left hand side of the engine.

Q. What were you doing?

A. Standing up.

Q. Just tell the court what happened there in your presence.

A. Well, I was standing on the left hand side of the engine. About all I could see or hear was a few rocks coming, and was ducking. I could hear them hitting the engine.

O. What else came in?

A. I couldn't see anyone in particular, that is, that I could recognize at first.

Q. Did you notice a number of people out on the highway to the right of the engine?

A. To some extent.

736 Q. About how many did you observe in number?

A. Oh, approximately thirty or thirty-five at that point.

Q. What were they doing?

A. Throwing rocks.

Q. Was there anything in addition to rocks that came into the cab of the locomotive?

A. There was.

Q. What was it?

A. Some inflammable fluid.

Q. What was it?

A. I suppose it was in a bottle.

Mr. Knoblock Objection.

Q. You didn't see the bottle?

A. No, I didn't.

Q. Did you hear it?

A. I didn't.

Q. What happened?

A. All of a sudden it went up in flame.

Q. What did you do?

A. Tried to get the water hose to put it out.

Q. How much of a flame was there?

A. Quite a little flame.

Q. That doesn't tell us anything.

A. It got pretty hot.

Q. How much of it inside of the cab? A. Most of the boiler head was on fire.

Q. Burning on the outside of the boiler head?

. On the outside of the boiler head.

Q. What about the engineer?

737 A. He was all over fire.

Q. Did you notice anything about his face or body?

A. Well, I did, really.

Q. What did you notice?

A. I noticed his eyes were awfully red. He said they hurt him quite a bit.

Q. Did you find any bottle caps there?

A. I did.

Q. How many did you find?

A. Two, I believe.

Q. Did you find any broken bottles?

A. I did.

Q. What kind of bottles were they?

A. Glass bottles; looked like they might be—after they were broken looked like they might be half pint bottles.

Q. Whiskey bottles?

Mr. Knoblock: I object to the leading form. The Court: Yes. Do you know what kind?

A. I know what one was, but not the other.

Q. What was that one?

A. It had a gin label on the bottle.

Q. Where was it!

A. On the deck of the engine.

Q. That is in the cab?
A. Down in the front.

Q. Did you see Special Agent James, the man that just testified?

A. I did.

Q. Where was he?

A. Standing on the right hand-side of the engine.

738 Q. Were you there when he was injured?
A. I was.

Q. What did you observe with reference to his hand?

A. I don't know as to how it was done.

Q. What did you see? Did you see his hand?

A. I saw his hand after it was over.

Q. What was the condition of his hand?

A. It was in pretty bad condition; had quite a hole in the back of his hand.

Q. Any blood there?

A. He was bleeding quite a bit.

Q. And do you know when he received that injury?

A. Not exactly, no. . . .

Q. When was it that you saw his hand with reference

to the throwing of the stones?

A: Well, right after it was over with, right after I saw his hand. Right after he got his glove off, then he showed his hand.

Q. After the bottles— After you found or saw the broken bottles, were there any stones thrown?

A. No, I didn't find the bottles until we arrived at

Canton.

Q. But after the fire there were some stones thrown? After you saw the fire inside the cab?

A. I don't remember as there was. I was possibly

trying to get the fire out.

Q. Did you hear any firearms?

A. I did not.

Q. The report of any firearms?

A. I did not.

Q. Either in the cab, or outside of the cab?.

A. No, sir.

739 Q. Or on the road?

A. No, sir.

Q. Did you see any guns in the hands of the occupants of the cab?

A. I did not.

Q. Do you know whether or not these special agents were armed, from anything you saw?

A. Well, not in particular, no.

Q. Did you know that anyone was shot, or claimed to be shot?

A. Not until we arrived at Canton. Q. Then you heard some rumor?

A. The special agent was telling us about it.

Q. You didn't see anybody shoot?

A. I did not.

Q. Or hear any shots!

A. I did not.

Q. Now, on the hard road crossing near Hollis, did you observe any automobile load of striking employees?

A. I did.

Q. Did you recognize anyone of them?

A. One.

- Q. What is his name? A. Arthur Brewster.
- Q. Where were these men?

A. They was sitting in a car.

Q. Where were they?

A. At the crossing between Iowa Junction and the M. & St. L. crossing.

Q. I don't get that.

- A. Between Iowa Junction and the M. & St. L. crossing.
- 740 Q. That is before you had this trouble down by the Allied Mills,—

A. Yes, sir.

Q. -is that right?

A. Yes, sir.

Q. How many men were in the car?

A. I wouldn't say as to how many. He was the only one I saw.

Q. Where was the automobile?

A. Sitting at the crossing.

Q. Did you later see that same automobile?

A.. I don't recall as I did.

Q. About what time was it on that day, January 2, 1942, that this fire occurred in the cab of the engine?

A. Well, I would say it was anywhere between 9 and 10 o'clock.

Mr. Heyl: You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. When did you go to work for the T. P. & W., Mr. Ruddell?

A. December 30, '41, I believe.

Q. And are you one of the men that was offered a \$10.00 bonus over and above your regular pay?

A. I was.

Q. Did Mr. Best offer that to you?

A. No, sir.

Q. Who did?

A. Mr. Gifford, in the presence of Mr. Best.

Q. And what is your rate of pay as a brakeman?

A. 87½, I believe.

- Q. And how long have you lived in Hamilton, Illinois?

 A. Oh, around twenty years.
- 741 Q. And where had you had railroad experience before this time?
 - A. T. P. & W., and Wabash. Q. Wabash and what else!

A. That's all.

Q. Were you employed by a railroad company just prior to your employment with the T. P. & W. this time?

A. Sir?

Q. Had you been working for a railroad company just prior to your employment by the T. P. & W. on December. 30?

A. No, sir.

Q. What was your employment in Hamilton?

A. I worked at the Purity Oats at Keokuk, cereal mill.

Q. What company?

A. Purity Oats. Q. What town?

A. Keokuk, Iowa.

Q. When did you last work for the T. P. & W.?

A. I couldn't say just exactly when. I think it was either in 1925 or 1926.

Q. What was the reason for your discharge?

A. Well, Mr. Eckhart and I had a few words, and I just quit.

Q. What was your work for the T. P. & W. at the time you quit in 1925 or '26?

A. Brakeman.

Q. How many men were in the cab of this engine on January 2, 1942?

A. Nine, I believe.

Q. And that included you—who as the engineer?

A. Gulick, Funk and special agents. I don't know their names.

Q. How many of them?

742 A. Four, I believe.

Q. Did you see any of them carry any guns that

A. I did not.

Q. Did you see or hear any of them fire their guns that day?

A. I did not.

Q. Did you know they had guns?

A. No, sir.

Q. Where did the special agents get on the train?

A. The East Peoria yards.

Q. At the Iowa Junction or at the M. & St. L. crossing, did you see Gulick and McAvoy or anyone in the cab of the engine there thumb their noses at these employees along the road, or shake their fists at them?

A. I didn't.

Q. Did you hear any of them yell at them, "Sucker"?

A. I did not.

Q. Would you say they didn't do that?

A. No, I wouldn't say they didn't.

Q. When you got down to the switch track by the Allied Mills, how many cars were set there?

A. I believe we set out ten there that morning.

Q. Where were you when those cars were set out!

A. On the ground opening the switch, cut the cars out of the train, cut the engine off the train after we made the set-up.

Q. Who was working around there with you?

A. Conductor Taylor.

Q. Did you see one of the special agents get down out of the cab of the engine that morning?

A. Yes, sir.

743 Q. Did you see him walk over and pull his coat back, and put his hand on the gun?

A. I did not.

Q. Do you know that special agent's name?

A. I do not.

Q. Did you know any of the special agents' names in the cab?

.A. Not until after that one got his hand hurt, and they said his name was James, that's all.

Q. Did you find out the names of any of the others?

A. I did not.

- Q. Was he the one that got down out of the cab?
- A. I don't think he did. I don't recall of him being down.
 - Q. When you got about two thousand feet west of the

Allied Mills, did you observe Funk assisting apprentice

fireman O'Brien in opening the blow-off cock?

A. He was on the left side, and I suppose that's what he was doing. He was supposed to be showing those firemen different things.

Q. Do you know where the blow-off cock was on that

engine?

A. I do.

Q. Any—That engine has a blow-off cock on both the right and left side?

A. It does.

Q. Just prior to having these rocks come, you noticed the blow-off cock turned on, didn't you?

A. Well, I wouldn't say as I did. Of course, that could

have been done, and I wouldn't have noticed it.

Q. How many rocks would you say were thrown there on that occasion? I recall you saying "a few rocks coming."

A. That was below the crossing?

Q. West of the Allied Mills about two thousand feet west a few rocks were coming, but you couldn't see anyone, and couldn't recognize anyone, is that right?

A. Yes.

Q. How many rocks were thrown?

A. I would say about four or five hundred a minute.

· Q. How many minutes did that continue?

A. I wouldn't knew; probably a couple of minutes, maybe.

Q. And somewhere in the neighborhood of eight hundred to a thousand rocks were thrown, is that right?

A. That's right.

The Court: A good deal like a hail, is that it?

A. Yes. If you would be out there ducking them, you would think so.

The Court: Go ahead, gentlemen.

Q. Did Mr. Gulick remain, in the cab of the engine all the time?

A. He did.

Q. Did he finish the run of the engine that day?

A. Him and Mr. Funk together.

- Q. None of you got out of the cab of the engine, did you?
 - A. I wouldn't say as to that, whether they did or not.

Q. But you didn't?

A. I didn't.

Q. Did any of those eight hundred or a thousand rocks hit you?

A. No, sir.

Q. When you saw Arthur Brewster there between the Iowa Junction and the M. & St. L. crossing, he was just sitting in the car, wasn't he?

A. Just sitting in the car.

Q. He wasn't making any threatening motions or gestures, or anything of that kind?

745 A. Not that I noticed.

Q. You never saw that car later, as far as you can recall?

A. Not as I recall.

Q. How many cars were there on that occasion?

A. Either three or four, I believe. I wouldn't say to be exact.

Q. At this point two thousand feet south of the Allied Mills you have described at that point, the curtains were drawn on the cab of the engine, weren't they?

A. They were.

Q. And the special agents were standing back by the curtain, weren't they?

A. I don't know exactly where they were standing, all of them. Part might have been:

Q. Where were you standing?

A. On the left side.

Q. Back or front?

A. In front; up in front.

Q. You didn't see anybody that you recognized throw anything there two thousand feet south of the Allied Mills, is that right?

A. I did not.

Mr. Knoblock: I think that's all.

Redirect Examination by Mr. Heyl.

Q. The rocks were coming from the right side?

A. Right side of the engine. Mr. Heyl: That's all.

The Court: We will stop at this point.

Trial Adjourned at 5:30 o'clock P. M.

UNITED STATES CICRUIT COURT OF APPEALS,

For the Seventh Circuit.

. I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the printed record, which together with Volume II constitutes the printed record, filed in this Court on the third day of July, 1942, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad; Plaintiff-Appellee,

vs.

The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.,

Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

(Seal) Kenneth J. Carrick,

Clerk of the United States Circuit Court

of Appeals for the Seventh Circuit.

CLERK'S COPY.

Vol. II

599980 Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE No. 17, ET AL., PETI-TIONERS.

TOLEDO, PEORIA & WESTERN RAILROAD

ON WEIT OF CERTIORARI'TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CENTIONARI FILED MARCH 22, 1942. F

Committee of the United States

THE SECTION OF RAILBOAD TRADITION,

Petitioners.

Toledo, Probil & Western Bailboad.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL.,

Petitioners.

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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United States Circuit Court of Appeals For the Seventh Circuit

No. 7951

TOLEDO, PEORIA & WESTERN RAILROAD,

Plaintiff-Appellee,

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THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL., Defendants-Appellants.

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January 13, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances: Same as before.

HAROLD KANE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in ananswer to

Direct Examination by Mr. Heyl.

What is your name?

Harold Kane.

Where do you live?

Q. A. Bushnell, Illinois.

What's your age?

Thirty-six. A.

Q. A. And what is your business or occupation?

Right now?

Well, what has it been?

I have been working as a carpenter.

What is it now?

A guard for the T. P. & W. Railroad Company.

When were you employed?

A.: Oh, a little over two weeks ago, I think.

And who employed you?

Johnny Kipling.

Q. And what branch of the road were you assigned 747 to? What trains did you ride?

A. I rode the trains going west.

Q. And were you on the train on January 2, 1942, that left Peoria in the morning and had some trouble near the Allied Mills?

A. Yes, sir.

Q. And where were you riding on that train?

A. I was riding on the engine. Whereabouts on the engine?

A. In the cab.

And did you observe any difficulty that train had west, or southwest, of the Allied Mills?

A. Yes, I did.

What was it?

Well, a lot of bricks and rocks were thrown at us.

Q. Was there anything that happened before you reached that point?

A. Oh, there had been a few bricks and rocks thrown.

Q. Where were you in the cab?

A. I was standing behind the engineer.

Q. What were you doing at the time this occurred south of the Mills crossing?

A. I was just dodging bricks and things.

Q. Now, were you armed that day?

A. Yes, sir.

Q. Did you shoot?

A. No. sir.

Q. Did you display the weapon that you had?

A. No. sir.

Q. Didf Mr. Kipling give you any instructions, when you were employed, with reference to the use of your firearm?

748 A. He said not to pull a gun unless you were personally attacked.

Q. Did you obey that direction?

A. I did.

Q. Did you at any time that day attempt to use the weapon that you had?

A. I did not.

Q. Now, where were you with reference to the special agent, James? Were you near him on your engine?

A. Yes, I was.

Q. What happened to him, if you observed?

A. Well, there was a brick or rock thrown, and he had his hand on the back of the seat there, and that rock hit him on the back of the hand.

Q. Were you there when it happened?

A. I was.

Q. Did you see the rock hit him?

A. I saw the rock hit him.

Q. Following that, did you see his hand? A. Yes, I saw his hand the following day.

Q. Did you observe anything besides rocks and stones thrown into the cab of that locomotive?

A. There was a bottle of some kind of inflammable fluid thrown in there.

Q. Did you see it come in?

A. Yes.

Q. Did you see the man that threw that?

A. Yes, I did.

Can you pick him out in the court room?

Yes, I think so.

Q. Pick him out. 749

A. The second man_back there in the third row of seats.

Mr. Heyl: Will you stand you, please, the second man in the third row? (Person named rises.)

Q. Is that the man?

No, the next row. A.

That is the fourth row of seats. Is that the man?

Ă.

A. That's the man.
Q. Mr. Lucas that's now standing up?

A.

And where was he when he threw that bottle? Q.

Well, he was standing up on an embankment there along the right-of-way.

Was the embankment lower or higher than the track on which the locomotive was traveling?

A. It was higher.

Q. How did he throwsthat?

A. Well, he just threw it into the cab, and that's about all I saw, him throw it.

Q. Then what did he do?

A. I couldn't see him after. The engine moved on?

The engine moved on.

- A. The engine moved on. Q. What happened in the cab when that bottle of fluid struck?
 - A. It ignited, and there was a lot of fire in there.

Q. Did you help put the fire out?

A: Yes, I did.

What did you do to put the fire out?

A. We tried to get the hose and put some water 750 on it, I guess, and the fireman threw coal on it.

Q. Did you observe the character of the bottle that was thrown?

It looked like a whiskey bottle.

Q. What size?

I would say a pint bottle.

Now, did the rocks and bricks strike the engine before or after this explosion of the bottle?

Some of them struck it before, and some of them afterwards.

Q. Then what did the engineer do, if anything, with reference to the locomotive?

A. Well, he stopped the engine as quick as he could.

Q. Did you hear any shooting?

A. No, I never heard any shooting.

Q. Either from the engine or from the ground?

A. No, I never heard a shot fired.

Q. Was there a noise there in addition to the rocks?

A. There was a lot of noise there.

Q. Can you tell the court about the number of bricks and stones that were thrown at the train at this time?

A: I wouldn't have an idea, only it was a lot.

Q. Many or few?

A. There was a lot of them thrown.

Q. Do you recall when this train that we have just been talking about reached a point opposite the Star Union Distributing Company, or the Union Brewery, as it is commonly called, south of the Union Station in Peoria while you were still in Peoria?

A. Yes, I recall that.

Q. What happened there?

A. I think that was where Engineer Funk was hit with a stone.

751 Q. Did you see what it was that hit him?

A. It wasn't a rock or it wasn't a brick. It was a piece of cinder or something.

Q. Where was he when that was thrown?

A. He was in the engine cab.

Q. Did you see the man that threw that?

A. No, I didn't.

Q. Did you see any other men there along the track at that time?

A. Well, there was a lot of men along the track at that time.

Q. Can you recognize any of them?

A. Well, I don't know very many of them.

Q. Do you recognize them as being some of the defendants who are here in the court room?

A. Well, I wouldn't say that I could recognize any of them.

Q. .What was the size of that article that you say hit Funk?

A. Oh, I would say it was about four or five inches in diameter.

Q. Heavy or light?

A. It was heavy.

Q. What was the effect on him when he got hit with it?

A. It kind of knocked him out for a little bit.

Q. Did you see that in the cab afterward?

A. Yes, he kept it.

Q. In the cab?

A. Yes.

Q. You went on in that train on west, didn't you?

A. Yes, sir.

Q. What happened west of Hollis?

A. Nothing happened from then on.

752 Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. How long have you lived in Bushnell, Mr. Kane?

A. Practically all my life.

Q. And how long have you known Harold Kipling?

A. Oh, fifteen or twenty years.

Q. And did he come to you in Bushnell, and approach

you for this guard work for the T. P. & W.?

A. Well, I talked to him two or three months ago about a job, and he said the first chance he got he would give me a job.

Q. And this was the occasion about two weeks ago you

say you went to work there?

A. Yes, sir.

Q. Can you tell us exactly what day it was?

A. It was two weeks ago yesterday. I don't know just what the date was, 29th or 28th.

Q. That was December 29, 1941?

A. I think it was the 29th.

Q. And what was your rate of pay there?

A. I don't know.

Mr. Elliott: I object. That is immaterial.

The Court: He said he didn't know.

Q. Are you one of the men that receives a \$10.00 bonus over and above your regular rate of pay?

A. No, sir.

Q. How many guards were there of you riding on this train on this incident west of Hollis you are speaking about?

A. I think there were eight.

753 Q. Eight guards on that train?

A. I think so.

Q. Now, what time did you leave the T. P. & W. yards that morning?

A. I don't know. I didn't keep track of the time.

Q. And were all eight of you up in that engine?

A. No.

Q. Where was the other four?

A. I think they were back in the caboose.

The Court: I can't hear this witness.

Mr. Heyl: I can't, either.

The Court: A great, big, healthy fellow like you ought to speak up loudly enough so these lawyers can hear you.

Q. When you left the T. P. & W. yards, there was nothing that happened at all until you got across the river, is that it?

A. That's right.

Q. Where was the first point that you noticed anything unusual?

A. I think down by that brewing company, that Star Brewing Company.

Q. Who was running the engine at that time?
A. I think Funk was running it at that time.

Q. Which side of the train did that rock come from?

A. From the right side of the train.

Q. You spoke of some men being out there along the right-of-way. They weren't very close at that point, were they?

A. They were right there on the crossing, on the road

there.

Q. Were any of them within a hundred and fifty feet?

A. They were closer than that.

Q. Did you get a good look at those men?

A. No, I didn't get a very good look. We were moving along.

754 Q. You yourself didn't recognize anybody?

A. Not there, no.

Q. You don't know who threw that object at the train?

. No, I don't.

Q. The fact of the matter is, you didn't even see it thrown, is that right?

A. That's right.

Q. Then, as you proceeded on south, when was the next time that you noticed anything unusual.

- A. Right west of the Allied Mills.
- Q. West of the Allied Mills there?
- A. Yes.
- Q. Did you do any switching there at the Allied Mills?
- A. Yes, they set out some cars there, I think.
- Q. Who, besides yourself, were special agents in that train on that occasion?
- A. Well, James and Cook, and I don't know what the other fellow's name was.
 - Q. James and Cook.
- A. And myself, and I don't know who the other fellow was.
 - Q. Where is Cook from?
 - A. I don't know.
- Q. Had you ever worked for the T. P. & W. prior to 'the time?
 - A. No. sir.
- Q. As you were switching there at the Allied Mills, were you the guard that got down off the train on the ground?
 - A. I was one of them that got out of the train.
- Q. Are you one of the men that opened your coat and put your hand on your gun, and pulled it half way out of your holster?
- 755 A. No, sir, I never done that, or saw anybody else do it.
- Q. At that time there was no threats? There was no show of violence at all there, was there?
 - A. Not from our side, no.
 - Q. How about the other side?
- A. They was running along there with clubs in their hands, some of them.
 - Q. Did they get on your right-of-way?
 - A. No, sir.
 - Q. Did any of them actually throw anything at you?
 - A. Not right then, no.
 - Q. Some of your men were yelling, "Sucker"?
 - A. I never heard any.
- Q. Did you see some of your men thumbing their noses at them?
 - A. No, sir, I did not.
- Q. Along in there by the Allied Mills is where the engineer gave them the shot of steam?
 - A. I never saw him give them any shot of steam at all.

Q. You never say that at all?

A. No.

Q. Would you say that blow-off cock was never opened along that road?

A. Yes.

Q. Are you sure?

A: As far as I know, it wasn't opened.

Q. When you got south of the Allied Mills, about how far south was that from the Allied Mills, this incident that you speak of?

A. Oh, I would say it was between a half and a

756 quarter, a quarter and a half mile.

Q. Were all four of you special agents armed that

A. I think so.

Q. Who gave you the guns? .

A. Mr. Kipling.

Q. Do you carry any deputy sheriff's commission from any county!

A. No. sir.

Q. You don't carry it from Peoria County here, either?

1. No; sir.

Q. Now, as you got down there a half to a quarter of a mile south of the Alied Mills, did you notice the engineer turn on the blow-off cock on that occasion?

A. I did not.

Q. Did you see the steam go up over these men standing on the bank there?

A. I did not.

Q. And the fact of the matter is, the steam hit them first before any rocks were thrown, isn't that right?

A. I never saw any steam.

Q. Now, you heard some shots there on that occasion, didn't you?

A. I did not.

Q. You never heard a shot come from the cab of that engine at all?

A. No, sir.

Q. You knew that a man by the name of Dilley was shot?

A. I heard about it, yes.

Q. But you didn't shoot him?

A. No. sir.

Q. You don't know who did?

A., I never heard any shots fired.

757 Q. There weren't any shots fired in the cab of the locomotive there, was there?

Mr. Heyl: I object. He said he didn't hear any.

Mr. Knoblock: All right.

The Court: I think he said that.

Q. How long did this shower of rocks there last at that place?

A. Oh, I would any about ten minutes.

Q. About ten minutes? And about how fast was your train moving along there?

A. Not very fast. They just started pulling out there.

Q. What is your best judgment with reference to the rate of speed?

A. Not over ten miles an hour.

Q. And how many feet did you travel along there while this shower of rocks was being thrown against your cab?...

A: I couldn't tell you. I don't know.

Q. Do you have any judgment on that at all?

A. No, I wouldn't.

Q. Who was running the engine right in there?
A. Gulick was running the engine at that time.

Q. And just where was it that you saw this man Lucas that you pointed out here?

A. Well, he was up on the bank there along the right-of-way.

Q. And how did you happen to see him?

A. Well, I just seen him let loose of that bottle.

Q. Did you see any of the rest of them up there?

A. Yes, there was more around there.

Q. Who else can you identify that was there?

A. I can't identify any of them.

Q. How long had you known Lucas?

758 A. Since he was special agent; used to come through Bushnell a good deal.

Q. You have known him since those days

A. I am not really acquainted with him.

Q: But you know who he is?

A. Yes.

Q. Now, you say you were standing right belind Engineer Gulick at that time, is that right?

A. That's right.

Q. Was James standing behind you, or over in the mid-

A. He had his arm behind me, his arm behind me resting on the seat.

Q. In other words, you were right behind Gulick, and James was behind you?

A. Yes.

Q. And there was two guards in there besides you two?

A. Yes.

Q. And there was Engineers Funk and Gulick, and who else?

A. The fireman.

Q. What was his name?

A. I don't know.

Q. And who else?

A. No one, I guess.

Q. No one else in there?
A. No one that I know of.

Q. Wasn't there a time out here at this Hollis situation where you special—I will withdraw that.

You had a curtain on that cab that day, didn't you?

A. Yes, we did.

Q. And that was drawn, wasn't it? Closed?

759 A. Yes.

.Q. And you special agents were standing back there by that curtain, weren't you, at one time?

A. Yes.

Q. And all of you were standing back there by the curtain?

A. I don't know whether all of us was or not.

Q. Who else besides you?

A. I couldn't tell you. I don't know.

Mr. Knoblock: That's all.

The Court: Call the next witness.

Redirect Examination by Mr. Heyl,

Q. Did you carry this gun when you were off the premises?

A. I did not.

Q. I mean on the company's premises. What did you do with the gun when you got through at night?

A. I left it in Mr. Kipling's office.

Q. Was that done by all the special agents?

A. I think so.

Q. As far as you know?

A. As far as I know.

Q. You had never carried this gun off of the premises of the T. P. & W.!

A. No.

Mr. Knoblock: Just a moment. One or two questions on cross examination I want to ask.

760 Recross Examination by Mr. Knoblock.

Q. Isn't it a fact, Mr. Kane, you were not in this engine cab at all, but you were the man that was up on the tender on top of the coal shooting directly at Dilley?

A. That's not true. I was not. I was in the cab of the

engine all the time.

Mr. Knoblock: That is all.

761 Mr. Heyl: I am recalling Mr. Kipling for one question.

HAROLD E. KIPLING, recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. Your name, please.

A. Harold E. Kipling.

Mr. Knoblock. I want to say this: I have no objection if I am accorded the same privilege later on with some of my witnesses.

The Court: You have the right to recall on an important

matter. We are not going to recall on everything.

Q. You are the same Harold E. Kipling who testified yesterday?

A. I am.

Q. I will ask you if you know what kind of guns and ammunition you furnished each of the special agents that have testified in this case?

A. Yes, sir. I furnished them 38 specials, with 38 spe-

cial shells, lead and copper-coated on the outside.

Q. And where did you purchase those shells?

A. At Mr. Louis Koren's.

Q. Koren Company on South Adams Street?

A. Yes, sir.

Q. In the 500 block, or 400 block?

762 A. Yes, sir.

Q. Have you one of the shells with you?

A. Yes, sir (producing same).

Mr. Heyl: We would like to have this marked as an exhibit, Your Honor,—

The Court: It may be marked.

Mr. Heyl: -and offer it in evidence.

It is PLAINTIFF'S EXHIBIT 2, until she can mark it

appropriately. We offer it in evidence.

Q. Is that one of the bullets or shells, rather, cart-ridges, furnished by you to each of the special agents?

A. Yes, sir.

Q. The same kind furnished to all?

A. No, there is one 32 special at Effner, Indiana. The fellow has got it in Effner, Indiana. That has a 32 cartridge, lead and copper-coated, too.

Q. The same character of load as this?

A. Yes, sir.

Q. And, outside of one that's at Effner, the others were all of the same type of load and the same type of shell and gun?

A. All of the men working out of Peoria, yes. There is some other kind of guns out on the road.

Q. But the ones working out of Peoria?

A. Yes.

Q. The special agents that were on this train January 2, 1942, carried the revolver that you have just described?

A. Yes, sir.

Q. Each and all of them?

A. Yes, sir.

763 Q. What instructions, if any, did you give these men, special agents, with reference to carrying the weapons off the premises?

A. Told them they were not to take their guns off the

premises under any consideration.

Q. That was the instruction given to each?

A. Yes, sir.

Q. What did they do with reference to turning them in to you?

Mr. Knoblock: Oh, I object to that.

The Court: I think he may answer if he can testify to what happened each evening whenever they ceased working.

A. Any man that went out or off of the premises turned in his gun. Some of the men that stayed on the premises kept their guns with them.

Q. You know that yourself, do you?

A. Yes, sir.

Mr. Heyl: That's all.

The Court: Cross examine.

Cross-Examination by Mr. Knoblock.

Q. You don't know what'the men did with those guns with reference to leaving them on the premises when they were at Hamilton and Keokuk, Iowa, do you?

A. They had instructions to leave them.

Q. I didn't ask you that. You don't know what they did with those guns at those places?

A. I wasn't out there, no.

- Q. And the same thing applies to Effner, Indiana?
- Q. You made each man check in at the Peoria yards before leaving each night?

A. Yes, sir.

Q. To you personally?

A. Yes, sir.

- Q. When did you buy these shells and guns from Louis Koren?
 - A. Well, I don't know the exact date. Q. What's the approximate date?
 - A. I imagine it was—I imagine it was the 30th.

Q. 30th of December!

A. I think. I am not sure. I wouldn't swear to that.

Q. How many guns did you buy there?

A. I didn't purchase the guns. Q. Who did purchase the guns?

A. The purchasing agent.

Q. Where were they purchased?

A. At Mr. Koren's.

Q. And that is the same Koren you mentioned that you bought the shells, is that right?

A. Yes. I bought some shells, and he bought some shells,

Q. How many guards did you hire on these trains altogether?

A. Well, there were eight on the train at the time on January 2.

Q. On what train? How many other guards did you have?

A. On the train?

Q. Yes.

A. I never had over eight at one time.

Q. Did you have any guards on the train going to Effner while this train was going to Hamilton?

765 A. Yes.

Q. How many did you have on that at the same

A. Two.

Q. That made ten guards that you hired specially? Mr. Heyl: I want to object to this because the men have all testified to the number of guards on the trains; repretition.

The Court: He may answer.

A. I had two men on the train going east, and after the restraining order was put out I only had one man on each train, and that is all that has been on the train.

Q. I know that. How many guards did you have under your direction? That's what I want to know. On Jan-

uary 2, 1942?

A. I had twenty-nine. Q. Twenty-nine guards?

A. With myself and two other regular men. That's all over the railroad. That's a two hundred and twenty-eight mile railroad.

Mr. Knoblock: I move the latter part be stricken.

The Court: No, I think it may stand.

Q. How many guards did you have, or special agents did you have, say, on December 25, 1941?

A. December 251

Q. Yes.

A. I didn't have any. Q. I am not asking you-

A. My three regular men. I have two regular men besides myself. Us three was working.

Mr. Knoblock: I hate to make this complaint, but it has been brought to my attention that witnesses have 766 been assisted from the counsel table, not from counsel,

and I ask that be refrained from in the future.

The Court: I knew nothing of that. There should be nothing of that kind.

Mr. Elliott: I know nothing about it.
Mr. Heyl: I think that is your imagination.

The Court: There isn't anything about this that ought to confuse us, anyway.

Anything else?

Mr. Knoblock: That's all.

Redirect Examination by Mr. Heyl.

Q. Mr. Kipling, what made it necessary from the 25th of December, 1941, until the 30th or 29th, to employ these additional men special agents?

Mr. Knoblock: I object to that.

The Court: I think we will sustain that. We all know what made it necessary.

Mr. Heyl: That's all.

The Court: The strike came on, is what you mean?

Mr. Heyl: Yes.

The Court: I think we know that, that it is common knowledge.

767 ROY COOK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Roy Cook.

Q. Where do you live, Mr. Cook?

A. Macomb.

Q. What is your business or occupation?

A. With the company, you mean?

Q. Before your employment, what was your business?

A. Painter.

Q. Were you employed by the plaintiff in this case on or about the 29th of December, 1941?

A. I was.

Q. And in what capacity were you employed?

A. Special agent.

Q. Where were you assigned?

A. I was assigned on the engine.

Q. What engine? A. Number 40.

Q. Which direction did you travel?

A. East.

Q. On the first day, that was?

A. Yes, sir.

Q. What day was that? Let's get the date.

A. That was the 29th of December.

Q. 19411

· A. Yes, sir.

768 Q. You made the run to Effner and back, did you? A. And back.

. What was the next run you had?

A. The same run. Q. On what date?

A. That was on the 31st, and back on the 1st of January.

Q. And then what happened after that?

A. Well, I was assigned to the west run on the 2nd.

Q. On the 2nd day of January?

A. Yes, sir.

Q. 1942†

A. 1942, yes, sir.

Q. You were a special agent on that run?

A. Yes, sir.

Q. And were you armed with any weapon?

A. Yes, sir.

Q. What weapon did you have?

A. I had a 38 revolver.

Q. And who furnished that to you?

A. Mr. Kipling.

Q. That is the chief special agent?

A. Yes, sir.

Q. When he furnished it to you, what did he say to you with reference to the use of it?

Mr. Knoblock: I object to that.

The Court: He may answer.

Can't we agree he said the same thing to each one?

Mr. Heyl: We can agree if they will.

The Court: My only thought was it would save time.

Mr. Heyl: He instructed them not to use it except for purposes of—

Mr. Knoblock: Let the witness testify. The Court: Go ahead if you want to.

Mr. Knoblock: I am not complaining, but he is doing

the testifying.

The Court: Go right ahead and ask him. That is the reason I objected—didn't object, but thought we could agree that was what he said, but go ahead and ask every one.

Q. What did he say?

A. He told us not to use them unless we were justified in doing so.

Q. What do you mean by that?

A, If they attacked us.

Q. Personally i

Q. When did you get on this train?

A. Well, around about 8 o'clock.

Q. When you reached the switch at the Mills south of Peoria, did you get off the train?

A. I did, yes, sir. Q. Who else got off?

A. There was a switchman, Mr. Ruddell.

Q. What did you do, if anything, when you got off?

A. I just followed him back to the switch, and stood there.

Q. Did you see any of the strikers there?

A. Yes, sir.

Q. Where were they?

A. They were along on the highway.

770 Q. How far from where you were? A. Not over thirty feet.

Q. Did they say or do anything?

A. Well, yes, there was two of them that did.

Q. What did they do or say?

A. One of them had a club, and another drove up in a car, and one got out and stood in front of the car, and said to the fellow to get out of his road and let him take care of him. He spoke to the fellow that got out of the road, said, "Let that fellow in the car take care of him," then he mad threats he wanted to come down and get the switchman.

Q. Did you recognize either of these men?

A. One of them. Q. Who was it?

A. Mr. George Kneisley that had the club and made the threats.

Q. How long had you known him?

A. I didn't know him at that time, but they told me afterwards it was Mr. Kneisley.

Q. You afterwards learned his name, is that right?

A. Yes.

Q. Did you afterwards draw your gun, or do anything with your firearm?

A. I did not.

Q. Put your hand on it, or make any threatening moves?

A. I did not. I had my hand in my overcoat pocket.

Q. Did the switchman do anything?

A. No, sir.

Q. You completed the switching, and started on west, is that right?

A. Back to the locomotives, yes, sir.

771 Q. You again got into the cab of the locomotive?
A. Yes, sir.

Q. Where did you ride after you got in that time?

A. I rode on the locomotive.

Q. What part of it?

A. I was back to the coal tender.

Q. Was there a curtain there separating the locomotive cab from the tender in back?

A. No, sir.

Q. Was there a curtain there at all?

A. There was a curtain there, but it wasn't down.

Q. Where was it?

A. It was right at the back of the cab.

Q. Was that drawn?

A. It was rolled up, yes, sir.

Q. Rolled up?

A. Rolled up, yes, sir.

Q. Who, if anyone, was with you at that time?

A. Well, there were several on the engine, but I didn't know none of them.

Q. But back there on the tender where you said you were, was there anyone with you?

A. Yes, there was two other agents.

Q. Do you know who they were!

A. Mr. James was one of them. I didn't know who he was until after he was hurt, and they said it was James.

Q. Was there any others there?

A. There was several others there, but I didn't know their names.

Q. I want to know if there was any special agent 772 besides yourself back in the tender.

A. No, at that time.

Q. Later did anybody get into the tender with you?

A. There was another special agent came back in the tender.

Q. When?

A. Just before we got to the Allied Mills.

Q. After you finished this switching?

- A. Yes.
- Q. Did you stop any after you finished the switching and set out the cars at this switch until this bottle throwing occurred?
 - A. No, sir.
- Q. At the time the bottle was thrown, where were you standing?
 - A. I was standing back by the coal tender.
 - Q. Were you on the tender or on the floor?
 - A. On the floor.
 - Q. Who else was there with you? A. Mr. James was standing there.
 - Q. Anybody else!
- A. There was another gentleman, but I didn't know who he was.
 - Q. . Was that before James was injured?
 - A. Yes.
- Q. After James was injured, who was back there with you, if anyone?
 - A. Tere was another special agent back there.
 - Q. Did you see this bottle thrown?
 - A. I didn't see it thrown, but I seen it hit the boiler.
- Q. Could you have seen it thrown from where you stood?
 - A. No.
 - Mr. Knoblock: I object.
 - The Court: I think the answer may stand.
- 773 Q. You were at that time standing back of this curtain?
 - A. Back of this curtain.
- . Mr. Knoblock: I object to the leading form of the question.

The Court: He has answered that. Go ahead!

- Q. What happened after that?
- A. When that exploded, I got some coal or cinders in my eye, and it set the engineer on fire, and I helped put the fire out on the engineer.
 - Q. What else did you do, if anything?
- A. I was around there kind of holding my own with the rest of the boys. They was trying to save the engineer from burning up.
 - Q. What else?
 - A. That's about all I can remember of.

Q. Did you hear any shooting?

I. I did.

Q. Who shot?

A. Well, I, for one.

Q. Where did you shoot?

A. I was shooting out the curtain into the bank.

Q. What?

A. I was shooting in the bank, pulling the curtain apart.

Q. What do you mean by "the bank!".

A. Right down by the train.

Q. Is the track-lower than the highway?

A. Yes, sir.

Q. How many times did you shoot?

A. I shot four shells.

774 Q. Did anybody tell you to do that?

A. The engineer and fireman.

Q. They did?

A. Yes, sir.

Q. Did you hear them give anybody else any directions?

A. No, sir.

Q. What was happening at that time?

A. Well, the boys was still fighting fire on the locomotive.

Q. What?

A. The boys were fighting the fire on the locomotive.

Q. What do you mean by "boys"!?

A. The fireman. Q. Who else?

A. That's all.

Q. Were there any stones thrown then?

A. Yes.

Mr. Knoblock: This witness is being led.

The Court: Ask him what went on.

A. Well, the stones were flying from the outside, and plenty of them, from both sides, from both sides of the locomotive.

Q. Did you shoot at anyone?

A. I did not, no, sir.

Q. Did you see anybody else back there do any shooting?

A. No, sir, I did not.

Q. You were the only one that shot?

A. As far as I know.

Q. In your presence, I am asking you.

A. In my presence; yes, sir.

Q. About how much higher was the road there at that place?

775 A. Well, I should say eight feet.

Q. Did you hear anyone shooting from any other place along there?

A. No, sir, I did not.

Q. From the road?

A. I did not.

Q. Was there any noise at that time around where you were!

A. Nothing but the rocks flying and the blow-off valve on.

Q. Where was the blow-off valve?

A. On the right hand side of the engine.

Q. Right hand side?

A. Yes, sir.

Q. Where was that turned on.?

A. From the inside of the cab.

Q. Where was the engine when it was turned on? A. Right along in front of the Allied Mills there.

Q. That made a noise, did it?

A. Yes, sir.

Q. Did you see any men along the road inside of the fence?

A. I did.

Q. And right-of-way?

A. I did.

Q. How did they get over the fence?

A. There was no fence over there. They just walked off the highway right in on the right-of-way.

Q. Over this ridge?

A. Yes, sir.

Q. How far was the highway at that point from the railroad tracks?

A. Well, I would judge thirty feet.

Q. What?

776 A. About thirty feet.

Q. Were these men down on the right-of-way, or were they on the road?

A. They were on the right-of-way.

Q. What did they have, if anything?

A. Rocks.

Q. Anything else?

A. That's all I could see were those rocks.

Q. What were they doing with the rocks? Playing with them, or what?

A. Throwing them; throwing them at the engine.

Q. How many were throwing?

A. Well, I seen four.

Q. Four men or four rocks?

A. Four men.

Q. And where did the rocks strike, if they struck anything?

A. They struck the back of the engine and the coal

tender.

Q. How long did that continue? That throwing of rocks!

A. Well, a very few minutes.

Q. Then what happened?

A. We continued on the run.

Q. Did the engine stop finally?

A. No, it slowed down, but kept rolling along slowly.

Q. Anybody put out the fire on the engineer \$

A. Yes, sir.

Q. . Who was it?

A. Mr. McAvoy, the fireman, and myself.

Q. And how did you put it out?

A. With our hands.

Q. Was this shooting that you did before or after the fire?

777 A. After the fire.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. How long have you lived in Macomb, Mr. Cook?

A. Four years.

Q. You were engaged as a painter over there all that

A. No, just two years as a painter.

Q. What else did you do there?

A. I worked with a contractor.

Q. What?

A. A contractor, concrete and bricklayer.

Q. Where did you live before you lived at Macomb?

A. Kansas.

Q. Canton?

A. Kansas.

The Court: State of Kansas.

Q. Whereabouts?

A. Southeastern part.

Q. What is the name of the town?

A. Pittsburgh.

Q. What type of work did you do there?

A. I was a salesman.

Q. What?

A. Salesman.

Q. And how long have you known Mr. Kipling?

A. Well, the 29th of December was the first I met Mr. Kipling.

Q. Your first meeting with him was on the 29th of De-

cember, 1941?

A. Yes, sir.

778 Q. Where did you see him?

A. At the yards.

Q. Who approached you, and sought to engage you in this guard work duty?

A. Well, Mr. Kipling when I came over that morning. Q. And had you been employed prior to December 29?

A. No, sir, only just as a painter.

Q. When did Mr. Kipling first give you your gun?

A. The 29th day.

Q. You had just been in their employ a few hours until you were put on this Effner run, is that right?

A. Yes, sir.

Q. Have you ever had any special police work experience, or anything of that kind, before?

A. Two years as deputy sheriff.

Q. Where?

A. In Kansas.

Q. What county did you serve in?

A. Crawford.

Q. Crawford County, Kansas, and what is the county seat?

A. Girard.

Q. What years was that?

A. If I remember correctly, that was '32 and '3.

Q. Do you now hold any deputy sheriff's commission or any official capacity?

A. I do not.

Q. Mr. Kipling, when he hired you on the 29th of December, 1941, about how long a conversation did you and he have on that occasion?

779 A. About thirty minutes.

Q. And he just told you,—I mean he gave you a gun, which was a 38 special, is that right?

A. That's right.

Q. And some shells, and said, "Don't use this unless, you are justified," is that right?

A. That's right.

Q. And on those two runs to Effner, Indiana, and back, there was nothing unusual happened on either one of those trips, was there?

A. On the last run I was taken off of the train at Fair-

bury, and brought in in a car.

Q. Who took you off the train?

A. One of the special agents come up and got me, and brought me in another car, and another man took my place.

Q. Do you know who that was?

A. Mr. Howe.

Q. Did you have his gun along on that occasion?

A. I couldn't tell you whether he did or didn't.

Q. You got off at Fairbury and, as far as you know, nothing unsual happened?

A. They said-

Q. As far as you know?

A. As far as I know, nothing happened.

Q. Did you have your gun with you as you traveled from Fairbury to Peoria?

A. Yes, sir.

Q. Now, as you left the T. P. & W. yards on the morning of January 2, 1942, about what time did you leave?

A. Well, it was around 8 o'clock.

780 Q. And who drove the train from the yards down to the Allied Mills?

A. Mr. Gulick.

Q. Mr. Gulick drove it all the way, is that right?

A. Well, no, Mr. Funk was on there part of the time.

Q. You mean handled the engine?

A: Yes, sir.

- Q. Do you mean that he got off before you got to Allied Mills!
 - A. No, sir, he was still on the engine with us.

Q. He was? A. Yes, sir.

Q. Nothing happened until you got down to the Allied Mills?

A. Yes, we were rocked at several different places between the yards and the Allied Mills.

Q. How many place would you say?

A. I should say three places.

Q. At least three?

A. Yes, sir.

Q. Can you tell me where those places were?

A. The first place was in front of the Blue Star Distributing Co.

Q. What else?

A. Then at several different places from there on. I couldn't tell you exactly, and I was behind the curtains, and couldn't see out where the places were.

Q. The curtains were down all the way?

A. Yes, sir.

Q. And when you got down to the Allied Mills, about what time did you arrive there?

A. Around 9 o'clock.

Q. Where was this switching done?

781 A. Well, just this side of the Allied Mills a little ways.

Q. When did you get out of the cab at the engine?

A. When they went back to do that switching.

Q. Who told you to get out of the cab of the engine?

A. One of the brakeman, head brakeman.

Q. You didn't see Mr. Kipling there on that occasion, did you?

A. No, sir, I did not.

Q. When you got down, you walked back how far with the brakeman?

A. I should judge about four car lengths.

Q. You saw Mr. Kneisley there, is that right?

A. Yes, sir.

Q. Mr. Kneisley never got on the railroad property on that occasion?

A. Not at that time.

Q. You didn't see anyone there throw anything at you?

A. Not at that time, no, sir.

Q. You say you didn't open your coat and put your hand on your gun,—

A. I did not.

Q. -and pull it half way out of the holster?

A. No, sir, I kept my hand in my overcoat pocket.

Q. Kept them there all the time?

A. Yes, sir.

Q. After you got through with your switching, you went on down the track?

A. Went back to the engine.

Q. How far south did you go from the Allied Mills when this incident occurred?

A. It was right in front of the Allied Mills when they threw the fluid.

782 Q. I am talking about the one farther south.

A. I couldn't tell you; about a quarter of a mile. Q. When you explained this bottle as being thrown, was that there at the Allied Mills?

A. No. sir.

Q. You say that occurred right there at the Allied Mills?

A. Just this side a little ways.

Q. A little closer to Peoria? In other words, the situation occurred closer to Peoria than the Allied Mills?

A. It was— No, sir, it was closer to the Allied Mills. Q. That's true, but I mean Allied Mills is on the other side of where this situation occurred, is that right?

A. Yes, sir.

Q. You say there by the Allied Mills there is a high bank along the track, is that true?

A. About six or eight feet. Eight feet, I should judge.

Q. How far were you off the ground when you are in the cab of the engine standing up?

A. I should judge about eight feet.

Q. And when you were firing that gun, were you firing it with the level of the ground or above it?

A. No, sir, I was shooting straight down.

Q. Straight down?

A. Yes, sir.

Q. Now, you say the engineer and the fireman told you to shoot?

A. Yes, sir.

Q. How close was Gulick standing to you when you were shooting?

A. He was on the engineer's seat, and I was back by the tender.

Q. Did he yell your name to you to shoot, or how did he say it?

783 A. He just said, "Boys, shoot!"

Q. What was the fireman's name?

A. McAvoy.

Q. What did he say?

- A. He told us to shoot.
- Q. What did he say?
- A. He said, "Shoot!"
- Q. You were the only one of the special agents that followed that instruction, is that right?
 - A. As far as I know, yes, sir.
 - Q. How far was Mr. McAvoy from you when you were shooting?
 - A. Over on the left side of the cab.
 - Q. How far was he from you?
 - A. About four feet.
 - Q. How far in feet was Gulick from you?
 - A. I imagine about the same distance.
 - Q. You shot those four shots one right after the other?
 - A. Yes, sir.
 - Q. How many shots did you have in your gun?
 - A. Six
- Q. There was only one man there on that occasion that you observed that you know at this time, and that is George Kneisley?
 - A. That's right.
- Q. And George Kneisley never came upon the railroad property at any time that you saw him?
 - A. Not at that time, no, sir.
 - Q. Well, any other time?
 - A. No, sir.
- Q. You never saw any of them come on railroad 784 property there, did you?
- A. Those five that were at the engine throwing rocks after the fluid was thrown in the cab.
 - Q. Wasn't that right there at the Allied Mills?
 - A. Yes, sir.
 - Q. A little this side of Allied Mills?
 - A. Yes, sir.
- Q. When you speak of that, that is the bottle you say you saw hit the front of the engine?
 - A. Yes, sir.
 - Q. And became ignited?
 - A. Yes, sir.
 - Q. You say you were shooting through the curtain?
 - A. I pulled the curtain to one side.
 - Q. You pulled the curtain to one side?
 - A. Yes, sir.
 - Q. Then you could see where you were shooting?
 - A. Yes, sir,

Q. Was the engine moving while you were shooting?

A. Yes, sir.

Q. If you could see where you were shooting, there was no one in front the range of your gun at that time?

A. No, sir, there was not.

Mr. Knoblock: I think that's all.

The Court: Is that all? Mr. Heyl: That's all.

785 WILLIAM J. HUNTER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. William J. Hunter.

Q. Where do you live?

A. 330 Caroline Street, Pekin.

Q. What is your business or occupation?

A. Trainmaster's clerk, T. P. & W. Railroad.

Q. Where is the place of your business?
A. East Peoria yards.

Q. How long have you had that position?

A. Five and a half years.

Q. What are the duties of your employment?

A. Well, do all the stenographic work in connection with the trainmaster's work, check demurrage car reports.

Q. Are you acquainted with the train employees of the railroad?

A. Yes, sir.

Q. And how long have you known the train crews of the railroad?

A. Most of them ever since I have been there.

Q. Is that a part of your duty, to know these men?

A. Yes, sir.

Q. I will ask you to look at the photograph which I have heretofore had the reporter mark "Plaintiff's Exhibit 1", and ask if you can name the men whose pictures appear on that exhibit.

A. I can name part of them.

Q. All right.

786 A. Raymond Tinsman.

Q. You will have to identify them in some way.

Mr. Elliott: From left to right.

A. From left to right?

Q. Yes.

A. The third man from the left is Raymond Tinsman, and Alvin Overacker.

Q. Is he the one that is leaning on the sign that says

"Strike" on the card?

A. Yes, sir. Earl White.

Q. That's the one holding the sign on the stick in his hand, and that has the sign at the top "Strike"?

A. Yes, sir.

Q. He also has a pipe in his mouth?

A. Yes. Howard P. McCowan.

Q. Is that the one in about the middle of the picture with a club over his right shoulder?

A. Yes, sir.

Q. Who is the next man standing?

A. Clement H. Kirk. Q. And next to him?

A. Lawrence F. St. Clair.

Q. The two men at the right, one with his back to you and one with his head down, do you know who those two are, or are you able to identify them?

A. I can't tell from the way they are standing.

Q. Who is the man in the foreground of the picture seated with the club over his shoulder?

A. Oliver Kirk.

787 Q. Who?

A. Oliver Kirk.

Q. Are these all former employees of the T. P. & W.?

A. Yes, sir.

Q. There are two at the left end of the picture, left side of the picture, partly turned, their faces turned. Do you know who they are, or are you able to identify them?

A. One of them looks like William Christoff, the second

fellow there.

Q. The second one?

A. Yes, but the other fellow I couldn't say.

Q. The first man with the club or stick in his right hand, are you able to identify him?

A. No, sir.

Q. Is that because you can't see his face?

A. Yes, sir.

Q. Can you tell us where that picture was taken? What's the location?

A. Well, it appears to be at the entrance of the road leading into the East Peoria freight house of the T. P. & W.

Q. That's not the entrance from the lane from the hard road, is it?

A. You mean into the East Peoria yards?

Q. Yes.

A. No, sir.

Q. This is the entrance from West Washington Street, is that right?

A. Yes, sir.

Q. And did you see that picture published in any of the Peoria papers?

A. I didn't see it published. I saw a copy of it

788 after it was cut out of a paper.

Q: Do you remember what day it was in the paper?

A. No, I don't, because I didn't see the paper itself.

Q. You didn't take the picture, did you?

A. No, sir.

Q. Does that picture correctly and accurately show what it purports to show, and what you stated you could identify?

A. Yes, sir. I know all of them well.

Mr. Heyl: I offer in evidence the photograph that has been identified by this witness, and marked "PLAIN-TIFF'S EXHIBIT 1".

Mr. Knoblock: We object to it.

The Court: Is that all with this witness?

Mr. Heyl: I want to ask him a few more questions.

The Court: Perhaps you had better do that.

Q. Did you see men at this point you have indicated, and a point you say is shown by this photograph, at various times during this strike?

A: Yes, sir.

Q. What did they have in their hands?

A. Some of them had clubs in their hands.

Q. How many days did you observe that these strikers had clubs in their hands?

A. Oh, I would say about three.

Q. With reference to the entrance at the lane leading from the hard road down to the premises, what did you observe there with reference to the pickets? What did they have in their hands?

A. Clubs and paddles and sticks.

789 Q. When you drove in the premises on the lane, did you observe what these men were doing with the clubs?

A. Well, when I drove in all that I saw them doing was

carrying them,

Q. Were they standing or seated?

A. Standing, walking.

Q. What is it?

A. Walking.

Q. Did you observe their movement or actions at times when other people drove in?

A. Well, no, I didn't because I usually just came in,

the only car in at the time.

Q. Did you observe the action of these men there at the other point, being the point shown by Plaintiff's Exhibit 1, at other times than when you came in?

A. No, sir.

Mr. Heyl: I offer the exhibit.

Mr. Knoblock: I object,

The Court: Do you care to cross examine?

Mr. Knoblock: Oh, yes.

The Court: You may proceed with your cross-examination.

Cross-Examination by Mr. Knoblock.

Q. Mr. Hunter, you have been the trainmaster here at the T. P. & W. for five and a half years, is that right?

A. Trainmaster's clerk.

Q. Now, you said that going in and out of the premises there on some occasions, that you had seen the pickets 790 on the line in this exhibit here carrying clubs and so forth, is that right?

A. Yes, sir.

Q. Never on a single occasion were you ever threatened by those pickets, were you?

A. No, sir.

Q. Never on a single occasion did you ever see those pickets threaten anyone else on that lane, did you?

A. No, sir.

Q. Now, as is indicated in this exhibit here, these pickets had fires going around which they gathered to keep warm, isn't that right!

A./ Yes.

Q. And they used these clubs to stir up the fire, and put wood on the fire?

Mr. Heyl: I object as assuming more than a fact.

The Court: He may answer.

Mr. Heyl: If he saw them put wood on, he may; otherwise, it is a conclusion.

Q. All right! On occasions you saw these strikers putting wood on these fires to keep warm, isn't that right!

A. Well, I can't say that I ever saw—I ever saw themput any wood on the fire, but I saw the fire burning.

Q. Wood was the material being used?

A. Wood and coal.

Q. Wood and coal, and you saw them use these sticks and clubs to stir it up?

A. No, I didn't.

- Q. Mr. Heyl: Objected to as assuming. The Court: He may answer.
- 791 Q. When you entered—on the occasion when you entered the premises of the plaintiff there off of Route number 24, going down the lane to the roundhouse, you say you went through that picket line?

A. Yes, sir.

Q. Never on one single occasion were you threatened there?

A. No, sir.

Mr. Heyl: He answered that,

The Court: Maybe it was a different occasion.

You were never threatened at any time?

A. I was never threatened.

Q. And you never saw anybody else threatened?

A. No, sir.

Mr. Heyl: He answered it before. I object to the repetition.

The Court: He may answer.

Do you still object to the picture?

Mr. Knoblock: I don't think there is any proper foundation. Do you want to object or not?

The Court: Objection sustained.

Is that all with this witness !

Mr. Heyl: Yes, sir.

The Court: We will take a recess for a few moments. (Recess.)

792 LLOYD T. DORAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in aswer to

Direct Examination by Mr. Elliott.

What is your name? Q.

Lloyd T. Doran.

Q. Where d. Forrest. Where do you live?

Q. What is yo A. Thirty-six. What is your age?

Q. What is your bus A. Section foreman. What is your business?

Q. For what company?

T. P. & W. A.

Q. How l T. P. & W.1 How long have you been section foreman for the

A. Five years.

As section foreman, what, if anything, do you have to do as a part of your duties of patrolling the track? Is it a part of your duty to patrol the track?

A. Yes, it is.

Q. What is the purpose of patrolling the track?

To see that everything is O. K.

Q. On December 31 were you patrolling the track near Forrest? .

I was. A.

Did you patrol the track the day before also?

On the 30th did you find the switches and switch lamps and attachments in good condition?

A. I did.

793 Q. You may tell us what you found when you patrolled the track on December 31.

I found a switch at the east end of the Long Branch track at Forrest locked open.

Q. / Locked open?

It was open and the switch lock throwed away. There was no switch lock there. .

Q. What else?

- A. It was lined two and a half inches open. It would leave the points-
 - Was that fully opened?

A. No.

Q. About how wide would it be if was fully opened?

A. Five and a half inch throw on one side?

Q. This was two and a half?

A. Yes.

Q. What effect would that have upon a train proceeding toward the point of that switch when it was only half open?

· A. It would have went on the ground.

Q. What did you discover with reference to the switch stand and switch lamps? What did you discover with reference to the switch lamps at that place?

A. Well, they was busted, the lens all broken out of

them.

Q. Were they in good condition the day before?

A. Yes, sir.

Q. Did you see any object around there where the switch lamps had been broken?

A. No, I didn't.

Q. Did you observe any footsteps around?

794 A. I did.

Q. Was there snow on the ground?

A. Yes.

- Q. From which direction had those footsteps come to this switch?
 - A. Come from the hard road to be going north.

Q. What hard road was that? A. Route 24.

Q. Is that the route that goes east and west, paralleling the T. P. & W.?

A. Yes.

Q. Where is this west switch from the Forrest depot?

A. Well, I imagine it's about eighty rod from the depot.

Q. Is that one of the regular switches that are used by the T. P. & W. in the handling of its trains?

A. Yes.

Q. And by being half open, it would have thrown the train on the ground?

A. Going west.

· Q. One going west?

A. Yes.

Q. Did you observe any other switches?

A. One at Chatsworth.

Q. What did you observe with reference to the switch at Chatsworth?

A. The lamp was broken on the switch at Chatsworth.

Q. Had you patrolled the track the day before?

A. Yes, sir.

Q. Was the lamp in good condition at that time!

A. Yes, sir.

Q. Did you observe any footsteps in the snow around this switch?

795 A. Yes.

Q. What direction had they come?

A. From the hard road.

Q. This same hard road, number 24?

A. Yes, sir.

Q. What sort of tracks were they?

A. Just footprints. They was partly covered with snow.

Q. Did you observe those tracks at two different places?

A. Yes, sir.

Q. You may state whether they were similar tracks.

A. They was similar tracks, just regular foot tracks.

Q. And each leading to the hard road?

A. Yes, sir.

Q. Did you find anything that had been used to batter the lamps?

A. No, I didn't.

Q. See any splinters around there?

A. There was wood splinters on the one at Forrest, but I didn't notice any at Chatsworth.

Q. Wood splinters at Forrest?

A. Yes.

Q. Tell what those splinters were like.

A. Just shavings of wood is all that showed on it.

Q. How many of the lens in the switch lamps were broken out?

A. They were all broken.

Q. How many lens are there in a switch lamp?

A. Four.

Q. They had all been broken out?

A. Yes.

Q. How about the locks?

796 A. The locks on the switch at Forrest were gone.
Q. Did you find the locks at Chatsworth?

A. Yes, it wasn't opened or nothing, the switch there broken.

Q. Just the lamps were broken?

A. Just the lamps.

Q. With the lamps broken, would there be any indication as to the condition of the switch at night?

A. The trainmen wouldn't know for sure whether the

switch was right if they couldn't see the lamp.

Q. Were those main line switches?

A. Yes, sir.

Q. So that a train moving over the main line would have the necessity of seeing these in order to know what the switch was? It would be necessary to see those lights?

A. Yes, sir.

Q. And they were broken out?

A. Yes.

Q. Were all the lens broken out at Forrest?

A. Yes.

Q. And also at Chatsworth?

A. Yes.

Q. Did you immediately report to your superiors-

A. I did.

Q. -what you had found?

A. I did.

Q. Had you ever before this 31st of December found switches in that condition with the lamps broken?

A. No, I haven't.

Mr. Elliott: You may cross examine. Just a moment.

797 Q. Did you patrol near LaHogue?

A. No, sir, I didn't.

Q. Are you familiar with the way trains are operated on the main track through Chatsworth?

A. Yes.,

Q.. Are they operated at a high or slow speed?

A Slow speed, thirty-five mile an hour; supposed to be over the I. C. crossing over—

Q. At Chatsworth?

A. Yes...

Q. How about approaching from the west into Forrest!

A. They have to slow down for the Wabash, but they come in pretty fast. They have to cross the Wabash.

Q. They cross the Wabash at right angles there?

A. Yes, sir.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Doran, these things you have testified to, you discovered on—all of them on December 31, 1941, is that right?

A. Yes, sir.

Q. On no other occasion have you discovered anything unusual in your territory of any character, is that right?

A. That's right.

Q. Now, you did not see anything done to those switch lamps and to those locks there, did you?

A. No, I didn't.

Q. If anything was done to them, you don't know by whom?

798 A. No. I don't.

Q. And you have no knowledge of any kind as to who may have tampered with those things?

A. No.

Q. Now, the absence of a switch lamp requires the engineer to stop, does it not?

A. Supposed to stop, yes.

Q. If he obeys that rule, there is no danger, is that right?

A. That's right.

Q. So a compliance with the rules would eliminate any danger in that regard?

Mr. Heyl: Objected to as asking for a conclusion.

The Court: Yes, I think he has answered. Mr. Knoblock: All right. That's all.

799 SHERMAN HINDERLITER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. What is your name?

A. Sherman Hinderliter.

Q. Where do you live? A. Watseka, Illinois.

Q. What is your business?

A. Section foreman on the T. P. & W. Railroad.

Q. How long have you been section foreman?

A. Fourteen years.

Q. As section foreman, do you have anything to do with the patrolling of the tracks?

A. Yes, sir.

- Q. Over what section of track do you have jurisdiction?
- A. The main track through Watseka, Crescent City and Leonard.

Q. Over how many miles?

A. Twelve miles and a half.

Q. Did you or not patrol your track on December 30!

A. Yes, sir.

Q. I will ask you what the condition of the switches and switch lamps were on December 30.

A. They were O. K. the last time I was over.

- Q. About what time of the day did you go over those tracks?
 - A. It was about 4:30 when I went east.

Q. In the afternoon?

A. In the afternoon, yes, sir.

800 Q. Then on the morning of December 31 did you patrol the track?

A. Yes, sir.

Q. What, if anything, did you discover with reference to the switches and switch lamps at Crescent City?

A. I found the east lamps at Crescent City with the

lights broken out, the lens.

Q. How many lens are there in the switch light?

A. Four.

Q. How many of them were broken out?

A. Four.

Q. What, if anything,—Where was that switch with reference to the Crescent City station?

A. Well, it was, I should judge, about five hundred

yards east of the depot.

Q. And which way to the switch points point?

A. Well, they point to the east.

Q. Was the switch in any way changed?

A. No, the lock was gone off of the stand.

Q. Were you able to find that lock?

A. No, sir.

Q. Was the switch stand locked the day before?

A. Yes, sir.

Q. Is it the custom to keep all of the switches locked?

A. Yes, sir.

Q. This lock had been removed, and you couldn't find it?

A. That's right.

Q. After you made the inspection at Crescent City, where did you go?

A. I went west to Leonard.

Q. How far is that from Crescent City?

A. That's about three miles and a half.

Q. That was still on your circuit, was it?

A. Yes, sir.

Q. What did you find when you got to Leonard with reference to the switches?

A. I found three of the lens broken out of the lights on

the east switch at Leonard.

- Q. And did you find anything with reference to the other switches there?
 - A. No, there was only three lens broken out.

Q. And there are four lens in the ordinary one?

A. Four lens in the light.

Q. What did you find with reference to the location of the switch, as to whether it was open or closed?

A. It was closed.

Q. Did you see any tracks around either of those?

A. No, sir, no tracks.

Q. Then again in the afternoon on December 31 did you continue to—your patrolling of the track?

A. Yes, sir.

Q: And where did you patrol the track at that time?

- A: The same direction: Watseka, through Leonard, Crescent City and Leonard.
- Q. What did you find when you got back to Crescent City?

A. I was told by-

Q. What was told wouldn't be proper. What did you discover?

A. I found two knuckles off of the car set at the elevator for loading was gone, and the pins was gone.

Q. Explain what you mean by the knuckles and pins.

A. The knuckles are set in the draw bar to hold the

802 A. The knuckles are set in the draw bar to hold the two cars together when you couple up, the pin running through the knuckle and draw bar.

Q. Is it necessary to have a pin in order to couple the

A. Yes, sir.

Q. And they had been removed?

A. They had been removed.

Q. Did you make any search to try to find those pins!

A. Yes, sir.

Q. What was your success with reference to that search!

A. There was nothing around there.

Q. You were not able to find them?

A. Not able to find them at all.

Q. Had you had any reports as to pins being missing from these cars before?

A. No.

- Q. Is it a part of your duty to observe those things?
- A. Yes, we are supposed to observe all things of that nature.
- Q. Had the knuckles themselves been removed from the two cars?

A. No, sir, just one car there.

Q. Just one car?

A. And the knuckle from each end was gone.

- Q. Was it possible to couple on to that car without knuckles!
 - A. No, sir, unless there were pins. Q. That would be the only way?

A. The only way.

Q. Were those cars at Crescent City set for loading anything?

A. Yes, sir.

Q. What?

Q. You found no visible footprints around there!

A. No.

Q. Were those main line switches?

A. Yes.

Q. At Leonard and at Crescent City?

A. At Leonard and Crescent City both.

Q. Is that high or low speed territory through there for trains?

A. Well, pretty high.

Q. Approximately how much per mile do the trains run there?

A. Run around sixty miles an hour.

Q. With the lens broken out of these switch lamps, it would be impossible to tell how the switches were set, wouldn't it?

A. That's right.

Q. It is necessary to have those lamps there at night to determine how the switches are set?

A. Yes.

Q. Both these switches extended and connected with the main track?

A. Yes.

Q. Were one of those switches lined for the main track?

A. No.

Q. From the main track to the side track?
A. No, they were in their natural position.

Q. But the lights were gone?

A. The lights were gone. Mr. Elliott: All right!

804 Cross-Examination by Mr. Knoblock.

Q. Mr. Hinderliter, all trainmen have keys to the switch locks, do they not?

A. I presume they do.

Q. And a member of any train crew that may be running over that line any particular day have keys to those locks?

A. I suppose they do.

Q. What was the time the last train passed that territory on December 30, 1941?

A. Well, sir, I couldn't tell you.

Q. Whenever a switch light is out, the railroad requires the engineer to bring the train to a stop, does it not?

A. Yes, sir.

Q. And under the rule, then, if a train were brought to a stop there would be no possibility of an accident, would there?

A. No, not if they would bring it to a stop.

Q. You didn't see anybody around those switch locks or switch lamps in your territory, did you?

A. No, sir.

Q. If anything was done there, you don't know by whom, do you?

A. No. sir.

Q. And you don't know when, do you?

A. No, sir.

Q. And on the 31st of December, 1941, the trains over

those lines had been driven or had been run by different employees than formerly, isn't that right?

A. That's right.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott. 805

Q. On the 30th the switches were all right, weren't they?

A. Yes, sir.

Mr. Elliott: That's all.

LESTER V. MEENTS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Mr. Meents, you may state your name.

Lester V. Meents. A.

Q. Where do you live?

Sheldon, Illinois. A.

Q. · What is your age?

A. Thirty-four.

Q. And what is your business?

Section foreman. A.

For what company? ·Q.

A.

T. P. & W. Railroad. How long have you been section foreman for the Q. T. P. & W.?

A. Ever since 1936.

What is your section? Over what territory?

- Section number 1 that goes from Effner to Watseka. A.
- Effner to Watseka? Does that pass through Sheldon!

A. Yes, sir.

- Is it or not a part of your duty to patrol the tracks? A. Yes, it is.
- Q. And I will ask you whether or not you patrolled 806 the tracks on the 30th of December.

I did.

What time-in the day did you patrol the tracks?

A. Well, I patrolled three times during the day time,

and then again at night ahead of that extra.

Q. When you patrolled it three times during the day time, what was the condition of the switch and switch stands?

A. O. K.

Q. Then you patrolled it ahead of one of the trains on the evening of December 30?

A. Yes, sir.

Q. From what point to what point?

A. From Effner to Watseka.

Q. By what means of conveyance were you traveling?

A. Motor car.

Q. And ahead of what train?

A. The extra east.

Q. About how far ahead of the train were operating your motor car?

A. About two miles.

Q. As you proceeded east, what, if anything, did you find with reference to the switches at Sheldon?

A. There was two switches at the west edge of Sheldon called number "14" and "15" that were lined red and locked.

Q. Lined red and locked? By lining them red, that would indicate what?

A. They was lined for the side tracks.

Q. Were they completely opened?

A. Yes, sir.

807 Q. Was this train that you were patrolling ahead of to go in on any one of those switches?

A. No, he wasn't supposed to.

Q. What did you do when you found that those switches were lined red?

A. I lined them properly, and reported.

Q. Could the switches be changed from lining for the main track to lining for the side track without unlocking them?

A. No, they couldn't.

Q. You don't know who unlocked them?

A. No, I do not.

Q. Had there been any train over that track between the time you patrolled in the morning and this patrolling at 9:30 at night?

A. No, there wasn't. No, there wasn't.

Q. How far were these switches from the hard road?

A. Oh, about a quarter of a mile.

Q. Are there any cross roads near these switches?

A. That is the one I am talking about.

Q. How far was the east and west road from the track?

A. Oh, I would say a good half mile.

Q. And the north and south cross road was about a quarter of a mile?

A. About a quarter of a mile, yes.

Q. That is the cross road from Route 24?

A. Yes.

Q. Did you find anything with reference to the switch lamps?

A. Both of them, number 14 and 15, were broken.

- Q. What was the extent of the breaking of those switches?
- A. They was damaged so they wouldn't be able to be 808 used, used any more. The lights were out.

Q. How was the target on the switch?

A. They were bent up.

Q. From the condition of the target in the day time, would it be possible for the engineer to tell how the switch was lined?

A. No, he couldn't.

Q. What?

A. It would be impossible to tell.

Q. What is the target on the switch?

- A. The target is a banner with two different colors to indicate whether the switch is throwed for the main or the side track.
 - Q. Indicating that it is thrown for the main track-

A. It is green, and the side track red.

Q. And for the side track it is-

A. Red.

Q. Were these targets bent so he couldn't tell what showed?

A. He couldn't tell any color.

Q. What about the lens in the lamps?

A. They were broken out.

Q. How many lens were broken out?

A. All four of them.

- Q. On both of these switches? A. On both of these switches.
- Q. Did you or not observe any tracks around those switches?

A. It was snowing, and I couldn't see any tracks. It was snowing pretty heavy.

Q. It was snowing pretty heavy at that time?

A. Yes.

Q. And at 9:30 at night was after dark?

809 A. Yes.

Q. Was there anything in the condition of those switches to indicate to the engineer whether the track was clear or otherwise?

A. He couldn't tell anything.

Q. You discovered those, and stopped the train, did you?

A. Yes.

Q. Did you proceed on further?

A. Yes, sir.

- Q. What, if anything, did you find with reference to the switches?
 - A. That was all that was done.

Q. To these two switches

A. Just those two.

Q. You say there had not been any train over those tracks from the time you patrolled them in the morning until this train you were proceeding?

A. I don't know about the day time, but from 6:30, when we started out, until we got back, there hadn't been any

trains.

Q. Did you at once report what you found with reference to these switches—

A. Yes, sir.

Q.—and to your superior? You have been working for the company how long?

A. Ever since 1936.

Q. You were in the performance of your regular duty at that time?

A. Yes, sir.

Q. This was at Sheldon?

A. At Sheldon.

Q. And both at the west end of the town?

A. Yes, sir.

810 Q. Did you or not find anything with reference to the telegraph wire at Webster!

A. Yes, the next morning when it was daylight and you could see, I found wire that looked like it might have been cut.

Q. Where was that with reference to Webster?

A. About a mile and a quarter west.

Q. Was that one of the telegraph wires?

A. Yes, sir.

Q. Just describe to the court what you saw with reference to that.

A. The wire had been cut on each side of the pole. The piece of wire with the insulation was wrapped around the other two wires.

Q. How high are these telegraph wires from the ground? A. That pole where that wire was cut is about ten or

twelve feet high.

Q. That was on the T. P. & W. right-of-way, was it?

A. Yes, sir.

Q. Is that one of the telegraph wires that the company uses in the operation of its business?

A. Yes, sir.

Q. For the purpose of transmitting messages back and forth—

A. Yes, sir.

Q. —to its agents?
A. And dispatchers.

Q. You were along there the day before, weren't you?

A. Yes, sir.

Q. Was that wire broken and cut before?

A. I didn't notice it the day before.

Q. You saw nothing wrong with it the day before?
A. No, sir.

811 Q. How close is this wire to the railroad tracks?

How close are the poles to the rails of the track?

A. Oh, about twenty-five feet.

Q. And within the railroad right-of-way?

A. Within the railroad right-of-way.

Q. How close was this place where the wires were cut to the hard road?

A. Well, about three-quarters of a mile.

Q. And that is hard road 241

A. Yes, sir, 24.

Q. Had it been snowing during the night?

A. It snowed during the night.

Q. Could you observe any tracks around there?

A. Couldn't see any tracks.

Mr. Elliott: You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Meents, you say you patrolled this section from Effner through Sheldon to Watseka on December 30, 1941?

A. Yes, sir.

- Q. Did you find anything wrong that day?

 A. Not a thing that day in the day time.
- Q. At night is when you were speaking about finding this switch lamp damaged?

A. Yes, sir.

Q. And a switch lamp, when the lights are broken out, according to the rules that requires the engineer to bring his train to a stop?

A. Yes, it does.

812 Q. Therefore, if the rules had been obeyed in this instance, there would have been no accident?

Mr. Heyl: I object to that question.

The Court: Yes, to the latter part objection sustained.

Q. Sheldon is also within yard limits where trains move slowly, is that true?

A. Yes, sir.

Q. Then the next day—Also, all trainmen have keys to the switch locks, do they not?

A. Yes, sir.

Q. And on the 30th and 31st new crews have been operating trains over these roads, i.n't that correct?

A. Yes, sir.

Q. Now, the next morning you say you saw this wire near Webster. That may have been in the same condition the day before, could it not?

A. Yes, it could have been.

- Q. It may have been two or three days before that?.

 A. I have been watching the wires closer than that.
- Q. But it could have been the day before, isn't that true?

A. Yes, it could have, but I doubt it.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes, it may be stricken.

Q. Now, those telegraph wires at times break, isn't that true?

A. Yes, sir.

Q. And during winter, when there is ice and snow, there is a greater fendency to break than in normal weather, and you say this wire you are speaking about looks like it 813 had been cut. You aren't absolutely sure it had been cut?

A. Not absolutely sure it had been cut.

Q. You saw no one around those switch locks or lamps or wire at any time?

A. No, sir.

Q. If anything was done to them in any manner or form, you don't know by whom or when?

A. No, I don't.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott.

Q. If the telegraph wire had broke, it wouldn't wrap around in the way which you found it, would it?

Mr. Knoblock: I object to that.

The Court: I think the objection will be sustained. Q. How was it wrapped around the other wires?

A. It was twisted around the wires. The insulation was off the poles and both ends twisted.

Q. Were both ends twisted?

A. Yes.

Q. Was it wrapped around the pole?

A. No, it wasn't wrapped around the pole, but between the poles.

Q. And both ends of the broken wire were twisted around the other wires?

A. Yes, sir.

Q. What did you have to do to get those wires loose, or did you have anything to do?

A. Yes, I had a temporary repair.

Q. Tell the court what you had to do to make a temporary repair.

814 A. Had to untwist the wires, and we cut in a piece so we could have it fastened together again.

Q. How many times were the ends of these wires wrapped around the other wires?

A. I would say about twice.

Q. You had to unwind them twice and splice them in order to make the connection?

A. Yes, sir.

). What did you use to do that?

A. Our hands.

Q. What kind of tools did you use?

A. Pliers,

Q. You used the wires?

A. Pliers.

Q. Pliers similar to what you use in an automobile?

A. Yes, sir.

Q. They asked you about—if all trainmen didn't have keys. The striking trainmen also had keys, didn't they?

Mr. Knoblock: I object. He wouldn't know.

The Court: I think it is admitted that they did have.
All trainmen had keys?

Mr. Elliott: Yes.

The Court: I think I will sustain that.

A. Yes.

Recross Examination by Mr. Knoblock.

Q. On December 29, on December 30 and on December 31, new crews were handling trains over your section of that road?

815 A. Yes, sir.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

CHARLES SETH, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. What is your name?

A. Charles Seth?

Q. Speak louder! Where do you live?

A. Watseka, Illinois. The Court: Where?

A. Watseka, Illinois.

Q. What is your business?
A. I am an agent at Chatsworth for the railroad.

Q. What railroad?

A. T. P. & W.

Q. How long have you been agent there?
A. I started the 30th of December, 1941.

Q. As agent did you receive any report with reference to cars having knuckles or pins missing?

A. You mean when I first started?

Q. Yes.

A. No.

Q. Did you on December 31? That is the day before New Year's.

A. Yes.

816 Q. What examination did you make of the cars at Chatsworth?

A. Well, after I was told—They told me there was some gone. I went around and looked at all of them, and there were four missing.

Q. Cell us what were missing from the ends of those

cars?

A. The knuckles and pins. Q. On how many cars?

A. Three cars.

Q. How many knuckles were gone?

A. Four.

Q. And how many pins were gone?

A. Four.

Q. Was it possible to couple those cars together with the knuckles and pins gone?

A. No, sir.

Q. Was it possible to connect those cars to any other cars or train that come in when the knuckles and pins were gone?

A. One end could have been on some; on two of them.

Q. Did you make any search to try to find those knuckles and pins?

A. I looked up and down the track, and didn't see them

anywhere.

Q. You were on duty during that time?
A. When I examined them?

Q. Yes.

A. Yes.

Q. Had you taken any of those knuckles or pins-

A. No.

Q. -from the cars?

A. No.

Q. Do you know anyone that did take them?

817 A. No.

Q. Where were these cars with reference to the Chatsworth station?

A. One was west of the station at one elevator, and the other was east of the station at the other elevator, and one of them was a little bit west of the station.

Q. Were they set for loading?

A. Two of them.

Q. At what places?
A. At the elevators.

Q. Did you, in your examination, notice any footprints in the snow?

A. Yes.

Q. Tell us just what you saw with reference to those

footprints, and where they led from and to.

A. Well, you could see around the ends of the cars there was footprints there, but you couldn't tell after you got back to the road or crossing. There was so many cars you couldn't tell where they went to.

Q. How close were these cars to the crossing

A. Well, maybe fifty or sixty feet, one of them.
Q. One was fifty or sixty feet? Which was that, the

A. That was the west one.

Q. When you went up to the other car, did you see footprints in the snow?

A. There was lots of them there. Most had been made

in the day time.

Q. Were they or not similar footprints?

A. Most all footprints look alike,

Q. How close was this east car to any cross street?

818 A. Well, not very much farther from the other road.

Q. Was any one of the pins or couplers found?

A. A man that works for the elevator found one of them in the coal shed.

Q. Did he report that to you?

A. He brought it up to me.

Q. That was the only one of the pins or knuckles that you found?

A. Yes.

Q. Or that was turned in to you?

A. Yes.

Q. Do you know when those cars were set out on the side track?

A. They was there before I came— Before I started to work there.

Q. Had you had any report as to any knuckles or pins being missing before the examination that you made?

A. No.

Q. Did you report these missing pins and knuckles to your superior?

A. Well, I reported it to another agent, and he told them.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. How long have you lived in Watseka?

A. Pardon!

Q. How long have you lived there at Watseka?

A. All my life.

Q. What is your age?

A. Nineteen.

Q. Had you ever had any railroad experience before as an agent when you went to work on December 30?

A. Not as an agent, no.

819 · Q. When you say that somebody found a knuckle in the coal shed of the elevator— Is that right?

A. Found a pin.

Q. Found a pin, but you don't know whether that pin came from one of these cars or from some other cars set a long time?

A. As far as I know, all pins are the same.

Qs You don't know whether that pin that was turned in came from these cars or not?

A. No.

Q. You didn't know anything had happened around there at all until somebody reported this to you?

A. That's right.

Q. Was that the section foreman?

A. No, a man that works at the elevator.

Q. A man that works at the elevator told you about it, and you have no knowledge of who did it or when it was done, is that right?

A. That's right.

Q. And you say this occurred on December 31, 1941, is that true?

A. That's when it was reported to me.

Q. That's when you noticed it?

A. Yes.

Q. And new crews had been operating trains over that road from December 29 on, isn't that correct?

A. I don't know about the date, but I guess there was

new crews on there.

Q. And several trains had been operated over that

road? Several trains were operated over that road in that three day span, isn't that true?

. A. Yes.

Q. You don't know who were on those crews, or what they did when they went through Watseka, do you?

No. A.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott.

Was one of these cars loaded?

A. Yes.

Were any of the pins or knuckles taken from that Q. car f

A. One.

Q. What was in the car?

Beans; soy beans. A.

Was it loaded ready to be shipped? Q. A.

Yes.

Now, do you know where it was consigned to? Q.

To Decatur, Illinois. A.

What were in the other two cars?

A. They were empty.

Do you know whether they were consigned to any Q. point?

A. Just billed back home.

That would be to Peoria?

To their own railroad; billed to Peoria, and then on to their own railroad.

Q. Were they foreign cars?

A.

Do you remember what cars they were as to initials?

A. The empty ones?

- One was a U. T. L. X. tank car, and the other one was R. D. G.
- 821 Q. What does "R. D. G." stand for? Do you know? No. A.
- You say you went to work on the 29th there at Chatsworth?

A. 30th.

- Q. Had you been working for the company prior to that time?
 - A. Yes.

Where ?

Watseka.

What was the occasion of your going to Chatsworth on the 30th?

A. To report for work there.

Q. Do you know what the previous agent had done! Where he had gone?

He was going in the army.

Going into the army?

Yes.

And you relieved this man at Chatsworth who had been inducted into the army? *

A. Yes.

You were a clerk at Watseka previous to that time!

Α. Yes, sir.

Q. For this railroad?

A. Yes.

T. P. & W. ? Q.

Yes. A.

Mr. Elliott: . That's all.

Recross Examination by Mr. Knoblock.

Mr. Seth, the T. P. & W. Railroad don't own any grain cars, do they?

822 A. I don't know.

Mr. Knoblock: All right! That's all.

Mr. Elliott: That's all.

WILLIAM O. JOHNSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

William Johnson; William O. Johnson.

Where do you live?

Aa Gilman.

What is your age? Q.

A. Sixty-two.

What is your business or occupation? Q.

Section foreman.

Q. How long have you been section foreman for the plaintiff?

A. Oh, in '33, I guess.

Q. That is when you started?

A. As foreman, yes.

Q. And continued down to the present time?

A. Yes, sir.

Q. What is your part of track that you take care of?
A. Well, it is from two and a half miles east of Gilman to half a mile west of Piper City.

Q. Does that include LaHogue, Illinois? The station at LaHogue?

823 A. Yes, sir.

Do you recall when this strike occurred?

A. Why, it's the 29th, wasn't it?

Q. 29th of December?

A. I think so.

Q. Prior to that time, had you ever observed any damage to switches or switch lights on your division?

A. No, not before that time.

Q. After that, did you observe any?

A. Yes, sir.

Q. What did you observe?

A. Well, a couple of switches unlocked, and a couple of switch lamps broken up.

Q. Where were they located?

A. East switch at LaHogue; east switches in LaHogue; both of them.

Q. Where were the switches with reference to the hard road, Route 24?

A. Oh, they were— That 24 don't go through LaHogue. It's about a mile north of it.

Q. Well, is there any road near there?

A. Yes, sir.

Q. How far from the road?

A. The road is probably ninety or a hundred rods west of them switches.

Q. Now, when did you discover the condition that you have described in these two switches?

A. December 31.

Q. What time of day?
A. About 9 o'clock

824 Q. In the morning.

A. Yes, sir.

Were you over the switches the day before?

Yes, sir.

Q. A. Over the tracks, and observed the switches?

Yes, sir.

Q. Were they or not in good condition the day before! Yes, sir.

Q. Just what was broken on those switches?

There wasn't anything broken on the switches; just locks unlocked and throwed away.

The locks were gone? Q.

A, Yes.

Q. What about the lights? A. They were broken up.

All of them?

A. Both of them, one for each switch.

Q. All four lens in each switch?

A. Yes, all four, and one lamp was broken up.

Q. What do you mean?

A. The frame. It was all broken up.

What about the target of the switch? Q.

They were all right. A.

Did you observe the condition of the switch as to whether it was open or closed?

One of them was half open.

Half open?

The switch on the passing track. A.

825 Which way does that point?

It points to the east.

Now, were these switches on the main line?

Yes, sir.

Do you know from your own observation as to whether or not this portion of the track that you supervise is a fast or slow track?

Well, it's a pretty speedy track. A.

It's the fastest section on the road, isn't it?

A. I guess it is.

How fast do the trains travel through that section? Q.

I couldn't tell you. I don't know exactly. no way of knowing.

Do you know what effect it would have on a train to strike these switches that were half open?

If it was westbound, it would go on the ground, couldn't help it. If they were eastbound, they might get through.

Q. Did you examine G. N. car number 31258?

A. Yes, sir.

Q. Where was that car?

A. At LaHogue elevator, north elevator.

Q. What did you observe with reference to the car?

A. Well, a couple of pins, knuckle pins, gone.

Q. Did you look for them?

A. No, I never looked for them at that time. In fact, I never did look for them.

Q. Could you couple that car with the train in the con-

dition you found them in?

A. No, it couldn't be done.

Q. How far is LaHogue from Chatsworth?

826 A. LaHogue from Chatsworth? About ten and a half miles.

Q. How far is it from Crescent City?

A. About the same distance. No, it's further; probably about fourteen miles.

Q. How far is it from Sheldon? A. Thirty-two or -three miles.

Q. How far is it from Watseka?

A. It's further than that from Sheldon. It is about thirty-two or -three miles from Watseka.

Q. Did you observe anything with reference to tracks near the place where you found this car, G. N. 31258?

A. Did I do which?

(Question read by reporter.)

A. Yes, sir.

Q. What did you observe?

A. There was— There had been a car stopped west of the elevator, grain office, and the tracks went to the cars. It went to this grain car, and then on to the coal car, but the coal car was evidently tight, and they never got them out.

Mr. Knoblock: 'I object.

The Court: Yes. Tell where the tracks were.

A. They come from this car up to the cars, then it comes across the three tracks to the south side of the railroad, and I suppose they got in the car there. That is the last of them.

Q. That is as far as you found the tracks?

A. Yes, at that place.

Q. Did you see any other tracks?

A. Yes. There is a dirt road that runs along by them.

switches, and tracks from the dirt road over to the switches.

827 Q. What kind of tracks?

A. Man tracks.

Q. Were these tracks in the snow?

A. Yes.

Mr. Heyl: That's all.

The Court: Cross examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Johnson, you say that you have been section foreman on this road since about 1933?

A. Yes, sir.

Q. You say that from 1933 up to December 29, 1941, you never found a switch lamp broken?

A. Oh, yes, I have found them broken before that, yes, Now, on December 29, 1941, is the date you say the

Q. Now, on December 29, 1941, is the date you say this strike occurred. Isn't it a fact that all trainmen have switch lock keys?

A. Supposed to, yes.

Q. And, furthermore, whenever a switch light is broken, under the rules that requires the engineer to stop his train, doesn't it?

A. Yes, sir.

Q. And if the rules were obeyed when the switch light was out, the engineer would stop his train and no accident would be possible?

Mr. Heyl: I object to that as speculation.

The Court: I think he may answer. Wait a minute! I don't see— Objection sustained.

Q. Now, you say you found the condition of these switches you have referred to at 9 A. M. the morning 828 of December 31.— Is that right?

. Right around 9 A. M. sometime.

Q. You have no idea who was there during the night!

A. No, sir, I do not.

Q. 'You absolutely have no knowledge of who may have been around there?

A. No, sir.

Q. And you have no knowledge that any of the striking employees of the T. P. & W. were around there?

A. No, sir.

Q. What was that car number? Will you give me that

car number you say the knuckles and pins were missing from?

A. That was G. N. 31— I don't remember the other numbers.

Q. You never looked for the knuckles, and pins down there?

A. No, never looked for them.

Q. When did you find those missing?

A. Right after dinner.

Q. That was in the afternoon of December 31?

A. Yes, sir.

Q. And you don't know who was around there that morning or during the noon hour, do you?

A. No.

Q. They might have been taken— If anything was done, it may have been done during the noon hour? During broad daylight?

A. No, it wasn't.

Q. How do you know?

A. Because the tracks were half covered with snow, and it didn't snow that morning.

Q. These tracks you speak of, you say they went 829 over to a car on the hard road, is that right?

A. I suppose that's right.

Q. You just suppose that? You didn't see where the car was parked?

A. I seen where the car was.

Q. Which side of the road was it parked on?

A. On the north.

Q. Was it on the pavement?

A. Well, the pavement stops right there at the elevator;

about two wheels on there.

Q. The tracks you saw leading into that car, as far as you know, may have had nothing to do with reference to the condition you found with reference to the knuckles and pins?

A. Well, I think it did.

Q. But you don't know it, do you?

A. I couldn't swear to it, but it was there to show for itself.

Q. That is just your guess, isn't it?

A. Yes.

Q. The same thing is true about the dirt tracks, isn't that right? The tracks from the dirt road?

A. Yes, come from the road to the switches.

Q. That's just your guess? That the men making those tracks had something to do with those switches?

Mr. Elliott: I object.
The Court: I think it will be sustained. Mr. Heyl: If he wants him to guess,-

The Court: Objection sustained.

Q. Did you have an employee working for you not so long ago who left a switch open that resulted in an accident?

No.

830 Or did result in his discharge? No. Oh, that's a long time ago.

You had one, didn't you?

No, he wasn't working for me. You know about the incident?

Yes.

Mr. Heyl: If it is hearsay, I move to strike it. He wasn't working for me, and I don't know.

Mr. Heyl: I move to strike it under those circumstances. The Court: Oh, I think it may stand if he heard about it. Mr. Knoblock: I think that's all.

Redirect Examination by Mr. Heyl.

Q. When you found lights broken on switches before, you didn't find them all broken?

. A. No, just one lens, a kid threw a rock through them,

or something.

Mr. Heyl; That's all. Mr. Knoblock: That's all.

831 EDWARD F. SNYDER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name? Edward F. Snyder. Where do you live?

119 Wyoming.

Q. Peoria, Illinois?

Righto!

What is your business or occupation?

Newspaper photographer.

For what newspaper?

Peoria Journal-Transcript.

How long have you been the photographer for this paper 1

A. About four years.

Q. I will ask you if you took a picture of a scene near the Toledo, Peoria & Western Railroad premises on or about December 28 or 29, 1941?

May I see the picture?

·Q. Yes, sir (handing same to witness).

A. I recall taking this, yes, sir.

And that is the one that's marked "Plaintiff's Exhibit 1"? You took that, did you?

I did.

When did you take it?

- Oh, I would say it was about 8:45 to about 9 o'clock in the morning.
- Q. What did you use for a camera? What kind of camera?

A Speed Graphic.

Was that camera in good condition?

A. Apparently, at that time. Did you operate it yourself?

I did.

What experience have you had in taking photographs?

A. Four years behind practically the same kind of

camera on newspaper work.

Q. How many photographs do you take each year, on the average?

A. I don't know, don't count them.

Q. Are you able, from that experience, to take an accurate photograph of the object you are seeking to take?

A. What do you mean by "accurate"?

Do you know what the word means? Correct? The camera take the picture. All I do is operate the shutter. The lens reproduces the image.

Q. From that operation do you get an accurate reproduction of what the human eye observes in looking at the

same object?

A. I think so.

Is that true of this photograph, Plaintiff's Exhibit 1?

A. I don't see any discrepancy in it.

Q. Then is that a true and accurate reproduction of what you saw there by the human eye on the day that you took this photograph, and at the time the photograph was taken?

A. I think so.

Q. How was this film developed?

A. Why, it's enveloped seven minutes in D. K. 72 at 65°.

Q. Is that the usual and customary way of developing?

833 A. That's right. It's a standard procedure.

Q. Was that followed in making this picture?

A. It was.

Q. Was this an enlargement? In other words, was

your original exposure the size of this photograph?

A. Why, I don't remember. Our picture was taken on a 4 x 5, and we enlarge whatever portion we care to for newspaper work.

Q. Was that enlargement done according to the usual

and customary method?

A. It was.

Q. Was it true and accurate?

A. I think it would be.

Q. And was there any exaggeration of the objects by reason of enlargement?

A. No; no:

Q. Or any change from the original film?
 A. No, we don't use any retouching at all.

Q. Were there any retouchings on this photograph?

A. None.

Q. Now, was the developing and enlarging under your

supervision and direction?

A. No, it wasn't. All I do is take the photograph, and we turn in the holder at the newspaper, and somebody else does the finishing for us.

Q. Do you know, from the examination of this exhibit, that is an accurate and true representation of the film you

turned in?

A. It is a standard procedure at all places.

Q. Is this true and correct?
 A. I would say it is, yes.

834 Mr. Heyl: We offer in evidence this photograph with the testimony of the former witness.

The Court: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Snyder, do you recall what day you took that photograph?

A. I don't recall the exact date.

Q. One of the last days in December? Around New Year's? In other words, it was after the strike started?

That's right.

You went over, and the man sitting on the bench with the club on his shoulder-I am referring to this gentleman sitting down with a club over his shoulder-you asked him to pose there, didn't you?

A. I don't recall any of the details.

Do you remember when he sat down one of the men

said, "Put your club on your shoulder like Alley Oop"?
A. I don't recall.
Q. You recall Alley Oop is one of the comic strips in the newspapers?

A. Yes, I do.

Mr. Knoblock: That's all.

Mr. Heyl: I offer this.
The Court: Any objection? It may be admitted.

(Note: Plaintiff's Exhibit 1.)

Trial Recessed at 12 o'clock noon. Trial resumed at 2 o'clock P. M. 835

Mr. Knoblock: I would like to ask the last witness one or two more questions.

EDWARD F. SNYDER, recalled, having been previously sworn, testified as follows, in answer to further

Cross-Examination by Mr. Knoblock.

Q. Mr. Snyder, you are the same Edward Snyder that testified this morning in behalf of the plaintiff, is that right?

A. That's right.

Q. I want to ask you if, at any time when you were over there taking these photographs, or at any other time, you ever saw any acts of violence or threats of any kind or character?

A. I never did.

Mr. Knoblock: That's all.

The Court: Any further examination? Mr. Heyl: That's all.

836 JAMES W. BARBEE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. James W. Barbee.

Q. Where do you live! A. 1510 Bigelow, Pcoria.

Q. What is your business or occupation?

A. Commercial photographer.

Q. How long have you been a commercial photographer?

A. Fifteen years.

Q. And what do you mean by "commercial photog-

raphy"!

A. It concerns the taking and making of commercial pictures, such as scenes of accidents, catalog illustrations, scenes of buildings, and so forth.

Q. And how many years' experience have you had in

taking and developing pictures?

A. Fifteen years at least.

Q. And does that include the taking as well as the developing?

A. It does.

Q. I will ask you if, at my request, you took some pictures on January 13, 1942, in the morning along the road leading from Allied Mills south or west along the hard road?

A. I did.

- Q. And who was present when these pictures were taken?
- A. Mr. Payne of the T. P. & W., and I can't recall the other man.

Q. Mr. Kipling?

837 A. Mr. Kipling, that's right.

Q. And how did you take these pictures? In what

manner were they taken?

A. Well, in the usual manner that any photograph is taken. The camera, the standard camera, with twelve and sixteen inch lens.

Q. How far was the lens above the pavement?

A. Various distances; around approximately five feet,

two inches.

Q. Now, I will ask you to look at the photograph which is marked for identification "Plaintiff's Exhibit 3", and state if that is one that was taken, and where you took that.

That is the first photograph that I made, which was A. taken just off the edge of the hard road near, or almost

opposite, the gate of the Allied Mills.

Q. And the camera was facing in what direction?

The camera was facing approximately east. And what else is there about that photograph? Did you make any measurements there?

Mr. Payne made the measurements.

In your presence?

Yes, sir.

What were the measurements there?

The camera was facing easterly fifty-two feet, four inches, west of the switch stand at the west end of track 61 near the Allied Mills entrance, lens five feet, three inches, high above the pavement:

Q. How wide is the pavement at that point, if you

know?

Forty-two feet. A.

Q. Did you make any other measurements there?

The far curb to the nearest rail was twenty-six feet, and the far curb to the switch stand was nineteen feet, top of the highway shoulder to the switch stand was fifteen feet, and the width of the highway shoulder was four feet.

Q. At that point? At that point.

Q. I will ask you to look at the photograph marked "Plaintiff's Exhibit 4", and state where that was taken.

A. That was taken from the bank (I would call it a "bank" or seemingly a dike) nearest the river from the hard road that is across the railroad tracks onto this upper ridge or dike road, I would call it.

·Q. How many feet west of the center of the track was

your camera placed?

The camera was facing westerly twenty-two feet, ten inches, east of the center line of the track.

East of the line?

East of the center line of the track, yes; east of Elm Grove Tavern.

Q. . Now, did you measure the width of that bank from the railroad?

A. The lens was five feet above the rail.

Q. Above the bank that's shown in the photograph?

A. That's approximately the same height as the one I took the picture from.

Q. The lens was how far above the rail?

A. Eleven feet.

Q. Above this rail shown in this photograph?

A. That's right.

Q. I show you the photograph marked "Plaintiff's Exhibit 5", and ask you to state when and where that was taken.

A. That was taken in a westerly or southern direction from the point that the other photograph was taken.

Q. Have you got the memorandum of it?

A. The camera was facing northwesterly twenty-one feet, ten inches, east of the center line of the track, one hundred and thirty-five feet south of the south end of the guard rail shown. The lens was nine feet above the rail.

Q. That is the guard rail that is shown on the pave-

ment, and ends at the last telegraph pole?

A. Yes.

Q. That is what you mean by that?

A. The highway guard rail.

Q. Not the railroad, but the highway? A. The highway guard rail, yes, sir.

Q. Now, I show yau the photograph marked "Plaintiff's Exhibit 6", and will you tell me where your camera

was placed to take that view?

A. The camera was taken facing northerly in the center of the track, facing northerly in the center of the track eighty-five feet south of the south end of the guard rail (that is the highway guard rail shown). The lens was five feet, one inch, above the ground.

Q. That was taken from the bank, was it not?

A. Yes, sir, from, I would call it, the shoulder between

the hard road and the dip into the track.

Q. The tall building that is shown to the left beyond the automobiles that appear on the hard road, what is that building?

A. That's the Allied Mills.

840 Q. That is where, the point where, the first picture was taken?

A. · Yes, sir.

Q. Now, I show you Plaintiff's Exhibit 7, and state if

that is a photograph that you made.

A. That photograph was made with the camera facing northerly thirty-nine feet, four inches, west of the center line of the track, one hundred and fifteen feet south of the south end of the guard rail, the highway guard rail shown.

Mr. Knoblock: How far south of the guard rail shown

did you say? .

A. One hundred and fifteen feet.

Mr. Knoblock: South of the guard rail shown?

A. Of the end post of that highway guard rail, and the lens was five feet, two inches, above the ground.

Q. And these photographs were all taken today, were

they not?

A. Taken by me today, yes, sir. Q. Did you develop them?

A. I developed the films, made the prints, and de-

livered them in person.

Q. Were these photographs correctly and accurately taken, and were the films correctly and accurately developed?

A. Yes, sir.

Q. Are these photographs true and correct?

A. They are.

Q. And do they correctly show what they purport to show?

A. They do.

Q. Who was with you when you took these photographs?

A. Mr. Payne and—

Q. Mr. Kipling? A. —Mr. Kipling.

Q. And they directed you as to the things that were desired to be shown in the photographs with reference to location, is that correct?

A. Yes, sir.

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Mr. Heyl: We offer in evidence the photographs identified by the witness, and marked "PLAINTIFF'S EXHIBITS 3" to "7", inclusive.

The Court: You may cross examine.

If I may interfere with you just a moment this morning, there was one exhibit offered, that of a bullet, and I permitted you to cross examine, and did not pass on whether it should be admitted. Is there any objection to the admission!

Mr. Knoblock: Yes, there is.

The Court: What is the objection?

Mr. Knoblock: The objection is there is no evidence showing it was the type of bullet actually used by these guards here. He says he distributed them to them. Whether they used other bullets is not shown, and we object to its materiality, don't know what the purpose of it is.

The Court: I wonder myself what the purpose is, but it does seem to me each of these guards testified that the guns and the ammunition were given to them by this witness who testified, and this witness testified, testified this was the only kind of bullet furnished in this locality.

Mr. Heyl: That's right.

842 The Court: If I am correct about that-

I don't at this time see any great materiality in evidence, but, other than that, it seems, if I am correct in my remembrance of the testimony, it did show that was the only kind they were furnished, and they said the ammunition received was from him. For that reason, your objection will be overruled, and it may be admitted.

(Note: Plaintiff's Exhibit 2.)

Mr. Knoblosk: We have no objection to the foundation for the pictures, excepting as to the materiality.

The Court: You don't care to cross examine? You think they are not material? Let's see.

Mr. Knoblock: We don't feel that they involve the area

in dispute.

Mr. Heyl: I will have to connect that up by another witness. This witness wouldn't know, of course, but I will say to Your Honor that I will say that the stoning of the train and the throwing of the bottles containing benzine took place at the places shown in these photographs.

The Court: All these photographs—Mr. Heyl: Relate to that one scene. The Court: —relate to that scene?

Mr. Heyl: Except the first photograph, which relates to the switch at Allied Mills, which has been referred to by various witness, and has been referred to frequently in cross examination. I will connect it up.

The Court: Your offer has been made, and I will

843 pass on it later.

Mr. Heyl: No further question about the foundation?

The Court: No, I so understand.

JOHN L. UMSHLER, ealled on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

What is your name? Q.

John L. Umshler. A.

Have you been subpoenaed, Mr. Umshler? Q.

A. Yes, sir.

Q. What is your business?

Superintendent of the P. & P. U.

That is the Peoria and Pekin Union Railway Company?

A. Yes, sir.

Are you familiar with the location of the connection between the Peoria & Pekin yard in East Peoria and the T. P. & W.

A. Yes, sir. Q. Do you, in the course of business with the T. P. & W., have cars to deliver from the Peoria and Pekin Union to the T. P. & W.?

A. Yes, sir.

Q. And the T. P. & W. to your company?

A. Yes, sir.

On the 29th of December last I will ask you whether or not you had cars from the Peoria and Pekin Union 844 to be delivered to the T. P. & W.?

A. I did.

Q. Do you recall the character of those cars, as to whether they were loaded or empty?

A. No, I don't, Mr. Elliott.

Q. Did you give instructions to have those delivered to the T. P. & W.?

A. Yes, sir.

I will ask you if you know what, if anything, occurred with reference to the delivery of those cars?

A. I was notified the evening of the 29th about 11:30 P. M. that the cut had shoved back into our East Peoria yard, and our cut was stopped at Herschel Street.

Did you make an investigation of that yourself? Q.

No. sir.

Where is Herschel Street with reference to the Peoria and Pekin Union yard?

A. It's between Washington Street at East Peoria and Farm Creek bridge, East Peoria.

Q. And Farm Creek is the bridge that leads over to

the T. P. & W. tracks, does it not?

A. Yes, sir.

Q. About what time in the evening of Monday, the 29th, did that occur?

A. About 11:30 P. M.

Q. Were those cars delivered?

A. No, sir. Why?

A. Unable to deliver them. They shoved them 845 back in to keep from—avoiding—any trouble.

Mr. Knoblock: I object unless he knows of his own

knowledge.

The Court: Sustained.

Q. Did you make an investigation to determine why they were not delivered?

A. No, sir, only that there was men around Herschel

Street.

Mr. Knoblock: Furthermore, my objection is based on hearsay.

The Court: Sustained.

Q. Did you make an attempt to deliver those cars on the following day?

A. Yes, sir.,

Q. About what time of the day?

A. About 2 or 2:30 in the afternoon.

Q. What occurred at that time!
A. Nothing. We delivered the cars.

Q. Were these cars that should have been delivered the night before?

A. Practically.

Q. From that time on did you have any trouble in delivering the cars to the T. P. & W.?

A. Not on that date, no, sir. Q. Did you on a later date?

A. On Wednesday, yes, sir, Wednesday afternoon, the following day.

Q. That would be December 31?

A. Yes, sir.

Q. About what time in the day was that?

A. About 2:30 P. M.

Q. What occurred then?

846 A. Our cut was stopped at Herchel Street, and was shoved back into the yard.

Q. Into the P. & P. U. yards?

A. Yes, sir.

Q. And were you able to make the delivery at that time?

A. About 3 P. M. I went to East Peoria and rode the cut to the T. P. & W. yards, to the end of the double track on the T. P. & W.

Q. And what did you notice in the vicinity of Herschel

Street when you got over there?

A. Nothing at Herschel Street.

Q. Did you notice any of the pickets as you made that delivery?

A. No, sir, only at the end of the double track; yes, sir.

Q. At the end of the double track? Was that on T. P. & W. tracks?

A. Yes, sir.

Q. How many pickets did you see there?

A. I would say about fifteen, twenty.

Q. And where did you leave those cars?

A. In the T. P. & W. yard.

Q. What did those pickets do when you arrived at the end of the double track?

A. I got off and talked to them.

Q. What, if anything, did they say?

Mr. Knoblock: Wait a minute. Unless you tell who— The Court: Can you confine it to anybody there?

Q. Who were these pickets? Were they former employees of the T. P. & W. on strike?

A. I couldn't say that.

Q. What did any of them say?

Mr. Knoblock: Wait a minute. I object. The Court: Do you know any of them?

A. No, sir, only by sight, but not by name.

The Court: Did any of them say they were pickets at the time?

A. No, some of them said they used to work for the T. P. & W.

Q. Some of them did say that?

A. Yes, sir.

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Q. What, if anything, was said by them, or in their presence?

Mr. Knoblock: We object. There is no way possible for us to refute such testimony.

The Court: I think I will let him answer. I want to be

lenient—not too lenient, of course. It isn't before a jury. Many of these things you couldn't hear before a jury, and you attorney's are in position to pick out matters that are improper at the conclusion. I can't tell what he is going to say.

I will permit you, at the conclusion of his testimony, to make any objection, or consider any brief or argument

that may be submitted.

I think, in view of the fact is isn't before a jury, you may answer. What did you say to them, and they say to you?

A. All I said to them was, "Boys, I am looking for Newdigate about the picketing of Herschel Street. Herschel Street, to my estimation, shouldn't be picketed" which is before we hit the T. P. & W. tracks—and that I

had nothing to do with the T. P. & W. Q. What did they say in reply to that?

A. About that time Newdigate arrived and introduced me to Mr. Coyle and Keiser, and I asked them about picketing Herschel Street. I believe Mr. Keiser was the one that said they wouldn't picket Herschel Street.

Q. That they would not?

A. Would not picket Herschel Street.

Q. Is that Mr. Keiser who is sitting here?

A. Yes, sir.

Q. And Mr. Coyle sitting right back of Mr. Keiser!

A. Yes, sir.

Q. What further was said, if anything?

A. About that time our engine came back, and I asked Mr. Newdigate if he would see that she got back home safe, and he said he would.

Q. Did you have any other trouble there any other

time making deliveries after that?

A. That was on Wednesday afternoon?

Q. Yes.

A. We didn't make an attempt. Wednesday afternoon I called Mr. Best and told him of the conversation, and then the next day, New Year's day, we decided we wouldn't make an attempt to go on the 1st.

Q. Why not?

Mr. Knoblock: I object to that. The Court: Yes, objection sustained.

Q. Did you make an attempt to deliver on Friday. the 2nd?

A. No, sir.

Did you have any cars for delivery on the 2nd?

A. Yes, sir.

Q. Was there any reason why you did not deliver on the 2nd?

Mr. Knoblock: I object to that.

The Court: He may answer.

A. Friday morning I called General Chairman Weideman of the Enginemen and General Chairman Ford of the Brotherhood of Railway Trainmen, who represent the men on the Peoria and Pekin Union, and asked them if they couldn't-

Mr. Knoblock: I object to what he asked them.

The Court: Yes, objection sustained.

Mr. Elliott: This connects with the same organization, however.

The Court: Objection sustained.

Did you hare any talk with either Coyle or Keiser on that day?

A. In the afternoon, yes, sir.

Tell us what talk you had with Mr. Coyle or Keiser on the afternoon of the 2nd.

A. Mr. Coyle wasn't present. Was Mr Keiser present?

Mr. Keiser, Weideman and Mr. Ford. A.

Who is Mr. Ford?

General chairman of the Brotherhood of Railway Trainmen.

On your road?

Yes, sir. A.

Who is Mr. Weideman?

A. General chairman of the Enginemen.

On your road?

A. Yes, sir.

What conversation did you have with Mr. Keiser in the presence of Mr. Ford and Mr. Weideman?

A. I was asked by the joint committee for a meeting at 2 P. M. regarding a delivery of cars to the T. P. & W., and I met the joint committee and Mr. Keiser in my office, and the committee was talking about an element of danger of their men on account of some shooting that morning, which I knew nothing of.

Yes?

And I asked Mr. Keiser and the joint committeemen if they thought there was an element of danger that their men might get hurt. They said they couldn't speak for

other than their own men that they represented, and Mr. Keiser represented, and I told the committee, if they felt that, to give me a letter in writing, which they returned the letter about 3:30 P. M.

Q. Have you that letter with you?

A. No. sir.

Q. Can you tell us the substance of that letter!

A. It was referring to our meeting this P. M. and feeling that there was an element of danger to the men that they represent, and therefore they should not be asked, our men should not be asked, to go to the T. P. & W.

Q. What time on Friday was that delivered to you?

A. About 3:30.

Q. 3:30?

A. 3:30, 3:45.

Q. Was there any delivery made that day, then?

A. No, sir.

Q. Was there any delivery made on Saturday morning?

A. No, sir.

Q. Was there an attempt to make a delivery on Saturday?

Mr. Knoblock: What date?

851 Mr. Heyl: Saturday morning, January 3.

Q. Did you make any attempt to deliver that morning?

A. No, sir.

Q. Did you have cars for the T. P. & W. at that time in your yards?

A. Yes, sir.

Q. And those cars were not delivered at the usual time?

A. No, sir.

Q. Following the granting of the temporary restraining order in this case, did you have any trouble in making delivery to the T. P. & W.?

A. No, sir.

Q. Has there been any trouble since the granting of the restraining order on the afternoon of January 3?

A. Well, the crews have stopped at the picket lines,

but no trouble whatsoever.

Q. Have your crews gone on through and made de-

A. Yes, sir.

Mr. Elliott: That's all.

Mr. Knoblock: There is no cross-examination.

852 EARL MARTS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. Earl Marts.

Mr. Knoblock: How do you spell that last name?

A. M-a-r-t-s.

Q. Where do you live, Mr. Marts?

A. 720 East Corrington. Q. What is your business?

A. Yardmaster for the Burlington Railroad.

Q. Here in Peoria?

A. Yes, sir.

Q. Were you subpoenaed in this case?

A. I was.

Q. As yardmaster on the Burlington, what, if anything, do you have to do with reference to the delivery of cars to connecting roads?

A. I have the entire supervision of that.

Q. D you, in the ordinary course of business, make delivery of cars to the T. P. & W. from the Burlington?

A. We do.

Q. And the T. P. & W. to the Burlington?

A. Yes, sir.

Q. Is there a reciprocal arrangement whereby your crew takes cars over and bring cars? That brings them back with them?

A. We have a limited reciprocal arrangement.

853 Q. And they do likewise with you?

A. Right.

Q. Up to and including December 29, 1941, did you have any trouble in making delivery of cars to the T. P. & W.?

A. We did not.

Q. Were any car delivered on December 30 or 31 or January 1, 2 or 3?

A. We attempted delivery on January 2.

Q. What kind of cars did you have to deliver at that time?

A. You mean what they consisted of?

Q. Yes.

A. Mostly coal; three or four other loads of various commodities.

Q. Where were the cars containing coal consigned to!

A. The majority of them to the Central Illinois Light Company.

Q. Is that located on T. P. & W. tracks?

A. It is.

Q. And is the only road that has connections with the private track of the Light Company, isn't it?

A. Yes, sir.

Q. How many cars did you have for delivery on January 2?

A. I believe it was eighteen.

Q. Did any of those cars contain interstate freight!

A. They did.

Q. Now, tell us what occurred when you—on January 2 about 3 P. M. with reference to delivery of these cars.

A. I had on my own authority withheld the transfer for a couple of days, due to the fact of the trouble that we heard was in progress, and the inability of myself to

contact my superior officers, but on January 2 I was 854 instructed by my superior officer to attempt to make

the delivery, with the provision that it must be made during the daylight hours, and it was—I was charged with the duty to see that no one was injured, if possible.

Q. Go ahead!

A. I put an engine on the transfer after our special agent had conferred with the chief of police of Peoria and the chief of police of East Peoria, as to being afforded protection, and he was assured that the move would be protected. Then we started for the T. P. & W. yards.

Q: Where did you start from?

A. What was known as the old house track, part of our yards.

Q. Part of your yard?

A. Yes, Burlington yard.

Q. Go ahead!

A. And we met with no interference until we reached Main Street, I believe it is, in East Peoria.

Q: Is that the street that comes across the bridge from the street where the City Hall is locaed?

A. Yes.

Q. Known as Caterpillar Trail?

A. Yes, that's the place.

Q. Go ahead, now!

A. At that point we encountered, I should say, twenty men, twenty to twenty-five men, a picket line, across the tracks,-

Q.

-carrying banners indicating that a strike was in progress. We stopped, and the special agent and 855 myself went forward and conferred with the men. They informed us, of course, that the condition ex-

isted, and to take the cars back to our yard.

These men that were on the picket line?

A. Yes.

Q. Did you recognize any of them?

Two or three of them by sight. I don't know very many of the men by name, but I know a good many of the men working on the railroad by sight.

Were they men that had been working for the T. P.

& W.1

A. Yes. The spokesman, the man that identified himself as a spokesman, was a yardman, switchman.

Q. Do you know what his name was?

A. I do not, and I told the boys that I thought they were making a mistake in stopping us.

Q. By the "boys", you mean the men you were talking

to?

Mr. Knoblock: I object. No one is identified here.

The Court: I think, if he stated he was a yardman and carried a banner, we could presume it was these boys that were on a strike. I think he may answer. What was said !

A. Some of the yardmen, I will put it that way, one or two of the men that I knew were employees, or former employees, informed us that we couldn't pass and, inasmuch as I had a report to make to my superior officers,-

Mr. Knoblock: I object to this.

The Court: Yes. State what was said.

A. I called the spokesman of the party to one side, and the chief of police of East Peoria police department, and told them I wanted a definite statement to take back

856 to my superior officers. I asked the spokesman, "You refuse to let us pass?" He said, "We do." I asked the chief of police, "You refuse to grant us protection?" He said, "I do because I haven't men enough." I informed the men to cut the engine off, and we returned to our yards with the transfer.

Q. And did not make the delivery?

A. We did not, not at that time.

Q. Can you identify—Could you, if you saw the man you talked to, could you identify him?

A. I could.

Q. You may look back on the left side of the aisle, and see if you can identify him—or the men standing back of the table.

A. (This gentleman in the rear there (indicating).

Mr. Elliott: Mr. Newdigate, will you please stand up! Mr. Newdigate! (Person named rises.)

Q. Is that the gentleman?

A. That is the gentleman that told me I couldn't go by.

Q. Is that the gentleman?

A. That is the gentleman that identified himself as spokesman for the party.

Q. What did you do with those cars when-

A. We returned them to our yard.

- Q. How long did they remain in your yard? A. Until—That was Friday. Until Sunday.
- Q. Did you make any attempt to deliver them on Saturday?

A. We did not:

Q. How many of those cars were for the Central Illinois Light Company?

A. I couldn't say definitely, but I should guess about

ten.

857 Q. They contained coal?

A. They did.

Q. And that coal was for the supply of the Central Illinois Light Company, wasn't it?

A. It was. \.

Q When were you able to make the delivery of those cars?

A. Sunday afternoon, January 4.

Q. That was after the restraining order had been entered?

A. It was.

Q. Was there interference with the taking of those cars at that time?

A. None whatever.

Q. If you saw a list of cars that were in that cut, could you identify them?

A. Well, I don't know that I could. I have a list of then in my office.

Q. You didn't bring that list with you?

A. No. I did not.

Q. Some of them were interstate cars, however?

A. There was three of them interstate cars.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Marts, how long have you been employed by the Burlington?

A. It will be forty years this next June.

Q. You say on January 2 you tried to make a delivery of coal and some other cars to the T. P. & W. about 3 P. M. is that right?

A. We did.

858 Q. And that you conferred, or your special agent conferred, with the chief of police of Peoria and East Peoria, and you were assured protection?

A. I did not. He did.

Q. I say your special agent did?

A. He did.

Q. Then that afternoon of the 2nd you proceeded to attempt to make a delivery?

A. We did.

Q. And did you—Had you heard at that time of the shooting that had occurred on that morning?

A. We had.

Q. Then, when you got to this picket line you have designated as Main Street in East Peoria, the man that you have identified as Mr. Newdigate discussed this thing with you there?

A. Yes, sir.

Q. And you asked him for a definite statement with reference to whether you could pass or not pass, did you?

A. I did.

Q. Did you instruct him you had to report to your superiors?

A. Yes, sir.

Q. Isn't it a fact Mr. Newdigate said this to you, or this in substance: "Mr. Marts, you know what happened this morning. I can not say for the rest of these men. I can only speak for myself, and there may be danger for you or some of your men." Is that about what he said to you?

A: In substance, yes.

Q. He indicated he could only speak for himself?

A. Right.

859 Q. And it was on that basis that you turned around and took your cars back to the yards?

A. It was. There was no evidence-

Q. Of force!

A. -of any animosity against our crew.

Q. That's right.

A. These men, now, being railroad men, could appreciate the fact or assume we were acting on instructions from our superior officers.

2. There was no show or threat of violence toward your

crew in any way?

A. There was not. On the contrary,-

Q. They were friendly?

A. We could pass the picket line with our light engine, and return to the other end of the string of cars.

Mr. Knoblock: That's all.

Redirect Examination by Mr. Elliott.

Q. Mr. Newdigate told you they refused to let you take the cars back?

A. No.

Mr. Knoblock: Wait a minute!

A. They advised us to take them back, in fact.

· Q. But they refused to let you go through the picket line with the cars?

A. They did, with the inference that somebody might possibly get hurt?

Q. And the chief of police was there at the time?

860 A. He was.

Q. And he told you he couldn't afford you protection because he didn't have men!

A. He did not say "afford". He says, "I can not protect you because I haven't men enough." My instructions were "no violence" from my superior officers.

Q. After having the talk with Mr. Newdigate and the chief of police, you returned to Peoria rather than to have any chance of violence?

A. Immediately.

Q. Also, by reason of the fact you refused violence, you didn't go on through?

A. Naturally.

Mr. Knoblock: I object.

The Court: He has answered.

Q. As you took this cut of cars over there, was your engine on the front end pulling them?

A. It was.

Q. And where was the cut stopped with reference to

A. Just before reaching it; in other words, just before

reaching Main Street.

Q. And then that is where you had the talk?

A. That's right.

Q. And after you had been informed that you couldn't have protection from the chief of police, and you had this talk with Mr. Newdigate, your engine was cut off the easterly end of the cut and run back on an adjoining track and hooked onto the other end?

A. Right.

861 Q. So that the cars themselves never went across the picket line, did they?

A. They did not.

Q. And they told you you couldn't take the cars, but you could take your light engine?

A. They did.

Mr. Elliott: That's all.

Recross Examination by Mr. Knoblock.

Q. Mr. Newdigate at that time told you he was only speaking for himself, and not the rest of the men?

A. Right.

Mr. Knoblock: That's alf.

The Court: Just one question:

Did you fear violence or not want to go through without the consent of these men that were on the strike? What was it?

A. Both, Your Honor.

The Court: Both?

A. Yes. We felt that—As I mentioned, there was probably twenty or twenty-five men in the line, many of whom I did not know. I had no way of knowing whether or not

they were T. P. & W. employees, strikers or not, and, inasmuch as we were informed that there might be violence should we attempt to run the picket line, I had to assume that there would be an attempt to injure someone or dam: age the equipment. By whom I could not say, of course.

The Court: That's all. Mr. Elliott: That's all.

862 JOHN H. HEILMAN, recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

J. H. Heilman.

You are the same J. H. Heilman who testified before in this case?

A. Yes, sir.

And you are-What position do you hold?

Chief train dispatcher and yardmaster, T. P. & W. A.

And on January 2, 1942, you were following that line of employment?

January 2 I was acting as engine foreman in con-

nection with the other duties.

Q. Now, on that date did you have something to do with three cars of bottles and two empty cars that were to be delivered to the C. R. I. & P.?

That's right. A.

Q. What did you have to do with those?

A. Well, at that time the customary practice was to leave those cars on the C. B. & Q. old house track. That was more or less of an agreement between the C. B. & Q. Railroad and the T. P. & W., and those cars were placed at that point on the C. B. & Q. old house track.

Q. All right! What happened on January 2, 1942! Were those cars delivered by the C. B. & Q. to Hiram

Walker's?

A. No. sir.

What happened? Why?

A. Well, the cars were left at that point.

What is it? Q.

They were left there on the C. B. & Q. old house-A.

To be picked up by the Rock Island? Q.

A. Yes, sir.

Q. Were they picked up by the Rock Island?

A. No, sir.

Q. Do you know why they were not picked up?

A. The reason they were not picked up is because Mr. Kelly of the Rock Island told me—

Mr. Knoblock: I object to this.

The Court: Who is Mr. Kelly of the Rock Island?

A. Yardmaster.

Mr. Knoblock: I don't see how it could be binding on us. The Court: I think he may answer. What did he tell you?

A. Mr. Kelly of the Rock Island told me in a conference I had with him he wouldn't be able to pick the cars up from the C. B. & Q. old house track because his employees would not do that work any more.

The Court: That may be stricken.

Q. Do you know when those cars were delivered on that track for the Rock Island?

A. They were delivered, as near as I am able to state,

January 11.

Q. I mean when were they delivered before January 2? When were they put there for the Rock Island?

864 A. Approximately 4:45 P. M.

Q. On what date?

A. That would be January 2, I believe. No, wait a minute. December 31.

Q. Were those the cars that were in the train that was stopped over at Swords' Siding?

A. That's right.

Q. That you testified about the other day?

A. They were.

Q. Those two cars?

A. Yes.

Q. Do you know when those cars were actually delivered to the Hiram Walker & Company plant?

A. Well, I don't know exactly, no, sir. Q. Were they delivered on January 2?

A. I can not answer the question. I am not certain.

Q. Do you keep track of cars that are interchanged between your railroad and other railroads?

A. I have a working knowledge of that, but I do not

keep the book record.

Q. Have you prepared, or caused to be prepared, a memorandum showing all of the cars on the T. P. & W.

moving on the days beginning December 28, 1941, to the

date of the restraining order in this case?

A. I haven't prepared any record. I have been handed a certain record that has to do with certain cars and certain trains.

.Q. Have you checked that record?

A. Not closely.

Mr. Heyl: We will have to call another witness on this.

865 NORMAN H SHEPLER, called on behalf of the plaintiff, and having been first duly sworn, testified as follow, in answer to

Direct Examination by Mr. Elliott.

Q. Mr. Shepler, you may state your name.

A. Norman H. Shepler.

Q. Where do you live, Mr. Shepler?

A. 214 East Maywood.

Q. What is your business?

A. Chief clerk, freight accounts.

Q. Of the T. P. & W.?

A. Yes, sir.

Q. . How long have you been that?

A. Twenty-four years.

Q. As chief clerk, what, in a general way, are your duties?

A. Accounting for all cars we handle.

Q. And, in connection with that, do you have the way bills of cars that are handled?

A. Well, I found them, but I guess you have them over

there.

Q. Do those way bills come to you?

A. Yes, sir.

Q. I will ask you to look at the paper which I will now hand you, and which will be marked "Plaintiff's Exhibit 8", and state whether or not that is a list of the cars that were handled by the T. P. & W. on December 29, together with the way bills, or copies of way bills, which came into your possession as chief clerk.

A. That is the way bills that the operating depart-

866 ment requested me to furnish.

Q. Operating department?

A. Yes.

Are those the original way bills that were furnished by the operating department to your department?

We furnished the operating department.

You furnished the operating department? Q.

Yes, sir. A.

Are those true and correct way bills of the various cars that are mentioned? ...

Yes. A.

Q. You may tell from what points to what points those various cars moved, that is, in what way is it indicated on the list. .

From Chatsworth to Shreveport, Louisiana; Effner,

Indiana, to Keokuk, Iowa.

Does the statement show the point of origin and the point of destination?

Yes, sir, in all cases. A.

And those are headed "Origin" and "Destination"?

Q. And the other columns are the car number and the way bill number?

A. Commodities and the date of original shipment.

Is that a correct statement of cars that were so handled?

A. Yes, sir.

The Court: Does that show the date you received them?

No, but we do have junction stamps on the way bills that shows the day where we received the car from the connections.

The Court: That is part of the exhibit?

A. Yes, sir, with the exception of cars that are forwarded originating on our line, because we just have a copy of the origin of that car.

Would that show the date of the delivery to the con-

necting line?

No, sir. A:

It does not? Q. No. Our junction report would furnish that. A.

Your junction report would furnish that, but the information that is shown upon the way bills, together with the date of receipt and movement, is correct, is it not?

Yes, sir.

Mr. Elliott: I offer, in connection with the testimony of the witness, PLAINTIFF'S EXHIBIT 8.

The Court: Is that all with this witness?

Mr. Elliott: No, I have several other exhibits.

The Court: We will take a recess for about ten minutes, and you can mark them.

(Recess.)

Mr. Heyl: We have a lady here, Your Honor, I would like to use. It is a little out of order.

The Court: All right. Call her.

Mr. Heyl: Can this witness remain here? It is nothing he is on.

The Court: Yes.

868 FRANCES REEVES, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Frances Reeves. Mrs. John Reeves, or Frances Reeves.

Mr. Knoblock: R-e-a-v-a-s?

A. No, R-e-e-v-e-s.

Q. Where do you live?

A. At 1944 Washington Road in East Peoria.

Q. What is your husband's name?

A. John Reeves.

Q. And where is he?

A. He is home sick in bed.

Q. And is he unable, because of that illness, to appear here in court today?

A. Yes, he is.

Q. Under a doctor's care?

A. Yes, he is.

Q. How long have you lived at that point? A. We've lived there about three months.

Q. And where is your house located with reference to the lane that leads from Route 24 to the property of the Toledo, Peoria & Western Railroad?

A. Well, our land joins right next to that road.

Q. How much land do you occupy there? How much property?

A. There's two acres.

Q. Two acres?

A. Two acres.

869 Q. On the west side of that road, is it?

1. That's right.

). That is, your property is?

A. Yes.

Q. Where is your house located with reference to the intersection of that lane and this hard road?

A. Well, our house is on the west side of that.

Mr. Knoblock: I couldn't hear that.

A. The west side of those two acres.

Q. That is where your house is located?

A. That's right.

Q. Is there another private lane or lanes to the west of your house leading from your house down toward the railroad tracks?

A. Yes, there is, right next to our house, west side.

Q. How close is that to your house? A. Well, just a few feet between them.

Q. When you enter your home with your car; which road. do you use to get to your home?

A. We use this private road.

Q. The one to the west-

A. Yes.

Q. -of your house?

A. Yes.

Q. Where is your garage located with reference to the front of your house?

A. It's directly back of the house.

Q. That would be east toward the railroad? Whatever direction that is?

A. Whatever direction that is.

870 Q. Did you have any conversation with the strikers? Former employees of the T. P. & W.?

A. They came to our place Sunday morning, and asked if they might have permission to get on our place.

Q. That was Sunday morning, December 28, 1941?

A. That's right.

Q. Who was present at that time?
A. Well, I was the only one at home.

Q. Do you know the men that called to see you?

A. No, I don't.

Q. Did you give them permission to occupy your premises?

A. No, I wouldn't give them permission.

Q. A little louder.

A. I wouldn't give them permission without my husband being there.

Q. And you and your husband are tenants on that prop-

erty?

A. That's right.

Q. Who is the owner of the property?

A. Mr. Reutter or Mrs. Reutter.

Q. Reutter? A. Reutter.

Q. Later did they return to see you?

A. Yes, they came several times before my husband got home.

Q. On that same day?

A. . That same day.

Q. What did they say in your presence to your husband

when he did return?

A. They wanted on this property, and he wouldn't give them permission without seeing Mr. Reutter first and talk with him.

Q. Did they return later after seeing Mr. Reutter!

871 A. He was supposed to see Mr. Reutter Sunday evening, but we had company come in and couldn't see him, and before he got to see them Monday morning they had already been to Mr. Reutter and gotten permission.

Q. Did you ever give them permission for them to oc-

cupy the premises you had under lease?

A. No, we didn't.

Q. Following that, after Monday morning, what did

they do on that property?

A. Monday morning them came back, one of the fellows came back, and told me they had permission to be on our land. Naturally, I didn't do anything about it because there was nothing for me to do, and so then Wednesday was the time that I saw them start going through our yard. On the slip they were not supposed to be on our place at all.

Q. They exhibited some slip of paper to you!

A. Yes, from Mr. Reutter, that they were not to bother our place at all, and it was Wesdnesday evening toward dusk that I went on my back porch and saw them come running through our yard with clubs, and one of them had a lantern and, naturally, I stepped to the porch and watched them, and they went after a car that had gone down this private lane.

Q. How far did they follow that car down this private lane?

A. They were 'way back of our garage on down there.

Q. Are there any houses at the other end of the private lane?

A. Yes, there are a lot of people who live there.

Q. What happened after that?

A. My mother-in-law went to go outside, and I asked her not to go because they were there. I was afraid they might do something.

872 Mr. Knoblock: I object.

The Court: Yes, objection sustained.

Tell what happened.

Q. What did she do?

A. She went outside, and I stood there and watched her

to see that nothing happened to her.

Q. How many men did you see running that evening toward this car that was going down the private lane?

A. There were six or eight of them.

Where did they start from that you observed?

A. They were in our garden when I first saw them, and then I watched them go clear through to the road, catercornered.

Q. Where is your garden with reference to the place

where they were on the picket line?

A. Well, it's between our house and where they have their shack.

Q. Did they put a shack up on your premises?

A. Yes, they did.

Q. Did you ever give them permission to do that?

A. No.

Q. Is that the corner of the lane on your property right. by the hard road?

A. Where they are?

Q. Where the shack is.

A. On our land, yes.

Q. Did you observe those men later on during the day at various times?

A. Yes. After that we started watching them. They

were following cars.

Q. What did you see them do when cars come in 873 and started down to the T. P. & W. yards?

A. They were after them. They ran after them.

Q. Did they have anything in their hands?

A. Yes, they had clubs in their hands.

The Court: What?

A. Clubs.

Q. Will you describe the clubs?

A. Well, you mean in length?

Q. Yes.

A. They were about that long, I imagine (measuring with hands).

Q. That would me about two feet and a half long?

A. Yes, I would say about that.

Q. How thick were they?

A. I would say two or three inches thick.

Q. How many men have you observed at a time doing that following cars with clubs in their hands?

A. There were usually six or eight of them.

Q. How many days did you observe that in the lane and near where they had this shanty?

A. Well, all evening I watched them because my hus-

band was coming home from work.

Q. Tell what you observed with reference to your hus; band.

A. When I heard him coming in, I always turn on the light, the porch light, and, as I heard him, I turned on the light, and there were about six fellows running down there behind him.

Q. Where did they come from?

A. They came from the west side of our house. When they saw him go into the garage, they just slowed up and came on back up the road, and he came in the house.

Q. Where did they go from there? After he turned in the garage, where they go!

A. They went back up the road.

Q. Before they saw him turn in the garage, what did they do?

A. They were running after him, running after the car.

Q. What did they have in their hands?

A. They had clubs. One of them carried the light:

Q. About how many of them?

A. Six.

Q. Do you remember what night that was?

A. New Year's Eve. Q. Wednesday night?

A. Yes

Q. Did you observe them following that day up until the time this injunction was issued in this case?

A. That was the day I was mostly interested in there because of our place. I was just a bit worried about it.

Q. Did you see them after that doing that same thing?

A. Yes.

Q. Until what date did they continue to do that?

A. I don't know what Jay it was. I hadn't paid much attention to it. All of a sudden they stopped, I knew that.

Q. It continued until they stopped suddenly, is that it?

A. That's right.

Q. Now, when these men chased your husband or his car,-

Mr. Knoblock: I object to that, "chased her husband".

The Court: She said they followed his car.

Q. —or followed him, where did they go after they discontinued that chase?

875 A. They went back up to the hard road.

Q. What do you mean, "up to the hard road"?

You mean the picket line there?

A. I didn't pay any attention to them after he came in. I just saw them go up toward the hard road, and then I never bothered.

Q. What did they have in this shanty that was on your property at the intersection of the road and this lane?

A. I have never been in it.

Q. Did you see them around there frequently?

A. Yes. They usually have a fire there, I know that.

Q. You have noticed that from the smoke?

A. Yes, that's it.

Q. And before this strike started did you ever see men congregate at that place with clubs in their bands?

A. No, I hadn't.

Mr. Heyl: That's all.

The Court: Cross examine!

Cross-Examination by Mr. Knoblock.

Q. Who owns this property, Mrs. Reeves?

A. Reutters.

Q. And are you aware of the fact that some of these striking employees paid Mr. Reutter a sum of money for a lease where that shanty is situated down—during the duration of this strike?

A. Yes, I know they did.

Q. And you understand that Mr. Reutter took that money?

A. Yes, I do.

Q. And that lane that you speak about is the regu-876 lar lane down to the place where that shanty is now located, isn't it?

A. I don't understand.

Mr. Knoblock: Read it.

(Question read by reporter.)

A. No, that isn't it. Q. What is that?

A. That isn't it at all. The shack is on one end toward the T. P. & W. lane, right next to it, and our house is over on the other side, the west side of the road.

Q. Do you know that since this strike started that Mr. McNear has offered Mrs. Reutter \$5,000.00 for that prop-

erty upon which the shack is now located?

Mr. Heyl: I object to that.

The Court: Sustained. You don't need to go into this lease, Mr. Knoblock. I am not going to consider this lease at all. I don't see why I should try this matter 'etween this woman and another at all. I am going to say, wherever the shack was located, they had a right to be.

Mr. Heyl: Providing these people gave their consent.

The Court: I am not going to try a lease.

Mr. Knoblock: We have no further cross-examination.

Mr. Heyl: We are not interested in the lease.

The Court: We have enough to try without trying a lease.

877 NORMAN H. SHEPLER, having been previously sworn, resumed the stand, and testified further as follows, in answer to

Direct Examination (Resumed) by Mr. Elliott.

Q. When you were on the stand a few moments ago, Mr. Shepler, you identified Plaintiff's Exhibit 8 as being the list of the cars in the train on December 29, 1941,—

A. Yes, sir.

Q. with the way bills and so forth?

A. Yes, sir.

Q. You may look at Plaintiff's Exhibit 9, which shows a list of cars on December 29, 1941, P. & P. U. delivery, together with the way bills. Is that a correct statement?

A. As requested by the operating department.

Q. And furnished by you?

That's right.

And look at Plaintiff's Exhibit 10, train of December 30, 1941. Is that the consist of the cars, together with the way bills?

A. Yes, sir.

And that was furnished by you from your records?

A. That's right.

Q. Look at Plaintiff's Exhibit 11, which is a train of December 31, 1941, and state if that is a correct statement and correct way bills covering those cars as indicated.

A. Yes, sir.

Look at Plaintiff's Exhibit 12, train of December 31, 1941, a list of cars and way hills. Is that correct?

Yes, sir.

Q. And Plaintiff's Exhibit 13, train of December 878 31, 1941, list of cars and way bills attached. Does that show the same information that you explained with reference to Exhibit 8-

A. That's right.

Q: -on those particular trains? Look at Plaintiff's Exhibit 14, January 1, 1942, list of cars in train and way bills.

A. Yes, sir.

Q. And Plaintiff's Exhibit 15. Is that a correct state. ment as to the cars as indicated there, and the way bills?

Yes, sir. A.

And those way bills are the originals or copies in . Q. your operating department?

That's right. A.

Q. And look at Exhibit 16, and state whether or not that is a correct statement of the items as indicated thereon.

A. Yes, sir.

And the way bills also?

That's right.

You may look at Plaintiff's Exhibit 17.

Yes, sir. A.

You may look at Plaintiff's Exhibit 18, and state whether or not that is a recapitulation of the cars as indicated in Plaintiff's Exhibits 8 to 17, inclusive.

A. Yes, sir.

Q. And is it a correct statement?

A. That's right.

Mr. Elliott: I offer in evidence PLAINTIFF'S EX-HIBITS 8 to 18, inclusive.

The Court: Cross examine!

Q. These statements show whether the cars are 879 interstate or otherwise, do they not?

A. The way bills are attached. That is the evi-

dence.

Q. What interstate cars—the way bills attached to the various exhibits show that?

A. Yes, sir.

The Court: Is that the only purpose of the offer?

Mr. Elliott: Yes.

The Court: Any objection? Mr. Knoblock: Objection.

The Court: What is the objection?

Mr. Knoblock: I think they are immaterial, irrelevant,

not proving anything here.

The Court: I think the only purpose is to show whether or not the company was engaged in interstate transportation.

Mr. Knoblock: I think this unnecessarily burdens the record.

Mr. Heyl: There is another purpose. The Court: What is the purpose?

Mr. Heyl: The purpose is to show the interstate freight in each of these trains.

The Court: I think they may be admitted if that is the purpose, to show that they were.

Anything else with this witness?

880 ADOLPH RINCK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Adolph Rinck.

Q. How do you spell your name?

A. R-i-n-c-k.

Q. How old are you?A. Forty-three years.Q. Where do you live?

A. On 409 Brons Avenue, Peoria.

Q. And how long have you worked for the T. P. & W.?

A. Six years.

Q. What is your occupation there? What work do you do?

A. Chauffeur.

Q. What do you drive?

A. I drive the L. C. L. truck.

Q. What is the L. C. L. truck?

A. Less than car loads of freight.

Q. Where do you drive it?

A. I drive from Peoria to Fairbury, Illinois.

Q. Every day?

A. Every day but Sundays.

Q. And what do you haul in that truck?

A. Merchandise, interstate freights. The Court: Interstate or intrastate?

A. Interstate.

881 Q. And on December 29, 1941, about 7:30 A. M., did you have this truck?

1. Yes, sir, had number 24 truck.

Q. Where were you going? Into the yard with it?

A. I was going into the freight house.

Q. Where do you keep the truck at night?

A. I keep it in the Washington Garage at Peoria.

Q. What happened when you arrived at the entrance to the driveway leading to the freight house?

A. I got to the driveway, and there was a picket line there, formed a line there, and I couldn't get in.

Q. Were they there the night before?

A. No, they weren't there the night before.

Q. How many?

A. About twelve to fifteen men there.

Q. All right!

A. They told me I couldn't go to the freight house. I said, "Why? I am a truck driver, have nothing to do with the trainmen." He said, "You handle a lot of freight."

Mr. Knoblock: Whom did he have this conversation with?

Mr. Heyl: I will identify him.

Q. Will you speak up louder, and make it more distinct?

A. I told them I delivered freight, that had nothing to do with the trainmen and, as far as the union I belonged to, had nothing to do with trainmen, and I could run.

Q. Are you a union man?

A. Yes, sir.

- Q. Did you know these twelve or fifteen men you saw there?
- A. I knew two of them, and the one that used to 882 be a special agent. I don't know his name.

Q. Was he a former employee of the railroad?

A. Yes, I believe he was. I saw him when he was a special agent. I don't know his name, though.

Q. Do you know the names of the others?

A. One was Verd Kirk, and Overacker. Q. And where were they at that time?

A. They were in the picket line. Q. Where was the picket line?

A. Right at the gate at the entrance to the freight house.

Q. How many were there?

A. About twelve to fifteen men there.

Q. How were they standing with reference to the road!

A. They formed a line right in front of the gate.

Q. In the road?

A. Right across the driveway.

Q. What did they have in their hands? A. They had picket signs in their hands.

Q. Anything else?

A. No, they didn't have anything else. Q. Were they standing still or moving?

A. Standing still.

Q. Did you have a conversation with either of the men you knew, or the crowd in general?

A. The crowd. I just knew these fellows, and I talked

to the crowd there.

Q. What did they say to you?

A. They told me not to go in. I said, "I have got to see what the boss tells me, whatever the boss tells me I have to do."

Mr. Knoblock: I think it has been gone over once.
The Court: Confine yourself to what the conversation was. What was said you haven't told us about?

A. I told them I was going to go into the yard and find out what's doing, whether they are going to send me out or not, and they agreed, and there was—it was all right for me to go through and I went to go—and I went in and called Mr. Hootman. It was shortly after 8. Mr. Hootman informed me—

Q. Who is Mr. Hootman?

A. He is the agent at the freight house.

Q. T. P. & W. freight house?

A. T. P. & W. freight house.

Q. What else?

A. He informed me that I should run. The truck was loaded Saturday night, the 27th.

The Court: What do you mean, "you should run"? Run

the truck?

A. Run the truck, yes, sir. The truck was loaded the 27th of December.

Q. Saturday night?
A. Saturday night.

Q. Where was the truck at that time

A. At the freight house, trailer number 26.

Q. You had part of that equipment with you, and were going to hook it on this load?

A. Hook it on to the trailer, yes.

Q. After you talked with Hoffman, what did you do?

A. I walked out to the picket line and told them the truck was loaded Saturday night, and I should get rid 884 of that load, dispose of that load, they should let me dispose of that load. They thought it was O. K. to do, but they told me not to bring the truck back that night. I made my trip. I went back and got my truck then, and went out the lane and notody bothered me when I went out. I made my trip and nothing unusual happened along the line, and when I come back they told me— There was another fellow spokesman, Cody:

Q. Cody?

A. Switchman Cody is all I know him. Q. Cole? They call him "Coley"?

A. They call him "Coley" is all I know.

A. They call him "Cole Q. He is a switchman?

A. Switchman.

Q. What else?

As He told me, "I thought you wasn't going to bring that truck back. The fellows told me this morning you weren't going to bring that truck back."

Mr. Knoblock: I object to what they told that morning. The Court: It is a conversation between him and Cole.

Go ahead!

A. "They told me this morning you weren't going to bring the truck back." I said, "I have to finish my day. I didn't say I wasn't going to bring the truck back. I have to finish my day." Nothing more happened, and I

went through. The next morning there was just a few fellows there. I didn't know any of them. When I come to work next morning, the 30th, there was just a few of them, and they tried to stop me again, and I explained

what was what, that I had to run. "If the boss tells 885 me to run, I am going to run the truck." A couple

said something, but I didn't argue. I went through anyway. I didn't talk to them any more. I hooked on my trailer and made my regular routine, and nothing happened. They didn't even bother me going out. That evening I come in again, just two or three fellows there, I never saw them before, and I had a load on, being late, and I never stopped and went straight through, and they never formed no line, and I disposed of my truck and went out again to put the truck in the garage, and nothing happened. They didn't bother me.

Did you have any conversation with them that eve-

ning!

A. I stopped there and one fellow asked me about going through. I never paid no attention to him, just kept right on going.

Did they say anything about how deep the hole was

in Farm Creek?

Mr. Knoblock: I object to this. That was Tuesday morning.

The Court: It is leading. Did they say anything about

Farm Creek !

Yes, that was Tuesday morning. They said, "You know there is a deep hole over there", meaning Farm Creek.

What was said with reference to overturning the truck, if anything was said of that kind?

Mr. Knoblock: I object to the leading-

The Court: He may answer. It is leading, but I don't know how he can refer to a particular part of the conversation if it happened. Did they say anything about it?

A. I don't know who is the fellow that says that.

886 The Court: What did he say?

Sirt

The Court: What did he say?

He said, "You know there is a deep hole", and I looked back to see who it was, and I didn't know who it was.

The Court: What about this turning over of the truck? Anybody say anything about that?

A. That was all that was said.

The Court: What was said?

A. About a deep hole in there.

The Court: About turning your truck over?

A. About that deep hole.

The Court: Is that about all the conversation?

A. About all the conversation.

The Court: That was against you, in any event?

A. Yes.

The Court: Go ahead!

A. Tuesday morning is when I went through. I don't know who said it, and I went through anyway. Wednesday morning there was nobody there when I went into the yard, there was no picket when I went in the yard, and when I went out there was two of them coming. They never bothered me, and I went straight through; and when I returned Wednesday there was nobody there.

Q. Then they discontinued that? A. They discontinued it, yes, sir.

Mr. Heyl: I think that's all. You may cross examine.

887 Cross-Examination by Mr. Knoblock.

Q. Then, Mr. Rinck, there never was a time when you failed to go through the picket line?

A. Never was a time?

Q. Yes.

A. I was stopped the one time.

The Court: Answer his question. Was there ever a time you failed to go through the picket line?

A. On this occasion?

Q. You always went through it, as I got it.

A. . I went through it, yeah.

Q. There was no harm done to you at any time?

A. No harm done to me, no, sir.

Mr. Knoblock: That's all,

The Court: Call the next witness.

888 WILLIAM GRAFELMAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. William A. Grafelman.

Q. What is your business?

A. General storekeeper.

2. For whom?

A. The T. P. & W. Railroad.

Q. How long have you been employed by the T. P. & W.1

A. Since August, 1929.

Q. And how old are you?

A. Thirty-three.

Q. And you live in East Peoria?

A. Yes, sir.

Q. What place?

A. 124 Urbandale Avenue.

Q. What are the duties that you perform in your occupation?

A. Storage and ordering of all material for the mainte-

nance of the railroad.

Q. Now, on December 29, 1941, did you have in your possession a truck or other vehicle that belonged to the railroad?

A. Yes, sir.

Mr. Knoblock: What was the date? December 29?

A. Yes, sir, I did.

Q. What kind of a vehicle was it?

A. It's a small stake body International, 1941 model.

889 Q. What did you do with that?

A. I was picking up material for the use of the railroad.

Q. Tell what happened.

A. I went— Right shortly after dinner I went over to the Illinois Furniture Company on South Adams Street and picked up some mattresses, and on the way back to the yard I stopped at the freight house to pick up some material they had there on hand for me. When I went to enter the yard, I was stopped by seven of the pickets.

Q. Who were they?

A. There was Clinton Stetler, O. W. Kirk, C. H. Kirk, J. J. Gimming and Newt Feldt.

O. And where were these men?

A. They were standing right in the middle of the road, in the entrance where you go off of Washington Street to the freight house.

Q. Did they have anything in their hands?

A. Yes, there was two of them that had clubs.

Q. Do you know which two?

A. O. W. Kirk and J. J. Gimming.

. What kind of clubs did they have?

A. Well, O. W. Kirk had just a large club. That's all I can say for it, and I can't say just what kind of club it was Gimming had.

. Did you have any conversation with these men at

that time?

A. Mr. Stetler came up to the side of the truck.

Q. Clinton Stetler?

A. Yes, sir.

Q. What did he say, and what did you say?

was going up to the freight house to pick up some material, and after that he stopped and talked to the other men, and he came back and said if they let me go in, they might as well leave all other trucks go in.

Q. What else did they say?

A. I told him it was necessary that I get that material and, if necessary, I would have to go and get a special agent and come back and go in. Somewhere in the conversation (I couldn't say who said it), but the statement was made if I did they would upset the truck.

Q. One of these men you have just described, is that

right?

A. That's right.

Q. What else happened?

A. Well, that was all that happened. I backed out of there, and went back to the yards.

Q. Did you get the material you started to get?

A. I did not.

Q. Were you prevented by these men?

Mr. Knoblock: I object. The Court: Sustained.

Q. Did you have any other reason not to get the material?

A. No, sir.

Q. Now, on December 30, 1941, at 8:15. A. M., what occurred?

A. Well, I took another International truck belonging to the company, and I proceeded to the freight house. I picked up some material there that was delivered to various places around the city, and I was not stopped at any time that day.

Q. What?

891 A. I wasn't stopped at any time that day.

Q. Did you see any men there?

A. Yes, there were some men there. I couldn't really state how many there were or who was there at that time.

Q. Did they have anything in their hands?

A. As I was entering, there was one man picked up one of the "Strike" signs, a board with a "Strike" sign, and waved that at me was all.

Q. On January 2, 1942, did anything occur?

A. Yes. I came to work around 8 o'clock, and I got the small International truck and I went to the East Peoria Bakery, and picked up some bread there and went back to the yard.

Mr. Elliott: Picked up what?

A. Some bread, and on entering the yard I was stopped by a few of the men, and they said I couldn't come in with the material. I told them I had talked to the boys the night before, the pickets that were on duty there, and they had told me as long as I wasn't bothering the trains and was driving the truck I would not be stopped any more, it would be all right for me to continue, so after I got back to the yard I got two laborers from the repair truck, and we went over to O'Neill Bros. warehouse, and I picked up a cook stove and some mattresses we had purchased that was over at O'Neill's warehouse, and proceeded back to the yard. On entering the yard, I was again stopped by the men there at the gate, and was teld that I couldn't come in with that material.

Q. Who were the men there?

A. There was Gerald Underwood and George Kneisley.

892 Q. Those two men were formerly employees of the T. P. & W. Railroad?

A. That's right.

Q. All right.

A. I was told to take this stuff back across the river, and have it delivered to the yard by caboose.

Q. Who told you that?

A. Mr. Kneisley.

Q. How many men were around there at that time with Kneisley and Underwood?

A. I can't rightfully say, but I believe there was one

man besides Mr. Kneisley and Mr. Underwood.

Q. And where were they with reference to the entrance to the freight house?

A. This was at the entrance to the yard.

Q. To the yard?

A. Yes, sir.

O. This is the lane that leads down to the building?

A. Yes.

Q. Have you told all about that incident?

A. Well, I left the yard then, and I went back down to Couri's fruit store.

Q. Where is that located?

A. On East Washington Street.

Q. East Peoria?

A. Yes, sir.

Q. All right.

A. And I called the master mechanic's office for further instructions.

893 Q. Did you see anyone there? Any of the strikers? A. Yes. While I was there I was approached by Verd Kirk.

Q. Is he one of the defendants in this case?

A. He is one of the former employees.

Q. What did he say to you?

A. He told me he had overheard—I won't say he overheard—but a conversation had been overheard my wife had on the telephone's and if she didn't discontinue criticising them they were going to get her.

Q. What did you say to him?

A. Really there wasn't much conversation to it. I can't remember now just what the conversation was after that.

Q. Is that all he said?

A. That's all.

Q. Did anything else occur that you know of?

A. No, the only thing that happened after that, Mr. Kipling came down and escorted me into the yard.

Q. That morning?

A. Yes, sir.

Q. That was to get the material in you had on your truck when they turned you back?

A. That's right.

Q. And you finally delivered that material with Mr. Kipling's aid?

A. Yes.

Q. Was there anything said to you by these men when Kirk told you not to go?

A. No, there wasn't.

Q. Now, you spoke of the lane. Is that the lane leading from the hard road down to the plant?

94 A. That's right.

Q. Did you travel that at any time?

A. Yes, I had been going in and out of there all the time ever since—

Q. Did anything occur while you were using that lane!

A. Did you mean to me?

Q. Did they do anything, any of these strikers, to you, or attempt to?

A. No, they didn't.

Q. Did you see them do anything with reference to any other person?

A. No, I can't say I saw anything happen outside of stopping the cars, and looking in to see who was in the cars.

Q. Did you see what these men had in their hands when they stopped the cars?

A. With the exception of the day I came with the stuff, one of the men did have a brake club in his hand.

.Q. That is on the lane?

A. Yes.

Q. What is a brake club?

A. It is a club they use to set the brakes on the cars when spotting in the yard.

Q. How long and how thick?

A. The club is about an inch and a quarter in diameter, and thirty inches long.

Q. Made of hard wood? A. Yes, sir, hickory.

Mr. Heyl: I think you may cross-examine.

895 Cross-Examination by Mr. Knoblock.

Q. On December 29 you say you went to the Illinois Furniture Company, and on the way there was some pickets lined up across the road, is that right?

A. No, they were in the entrance to our freight house.

Q. They were in the entrance to your freight house, and you say there was seven of them?

A. Yes, sir.

Q. The fact of the matter is, on that occasion there was only one man that talked to you, and that is John Stetler, isn't that right.

A. Yes.

Q. And Stetler walked up to your truck, and the rest of

them stood back a ways?

A. There was one man standing beside of Stetler, and three men standing in front of the truck, and two standing on the right hand side of the truck.

Q. All Stefler told you at that time was they would

appreciate it if you didn't take it in there?

A. They said—

Mr. Knoblock: I asked about a particular conversation.

The Court: Read the question. (Question read by reporter.)

The Court: Is that all he said to you?

Mr. Heyl: 'That's assuming he said that.

I object for that reason.

The Court: He can answer "yes" or "no" whether that is all he said or not.

A. He didn't say that.

896 Q. The fact of the matter is,- You say two of them,

O. W. Kirk and Gimming, had clubs in their hands?

A. That's right.

Q. They never waved them threateningly at you at that time, did they?

A. They did not.

Q. In fact, there wasn't any threat made to you of any

kind at that time?

Mr. Heyl: Objected to as asking for a conclusion. If it is word of mouth, that is true, but a man standing in the road with a club in his hand is a threat.

The Court: That is a question of law. He is asking now whether by word of mouth or by the use of a club he

threatened him.

Mr. Heyl: That is all right in that form.

The Court: Did they or not?

A. The threat was made if I returned they would turn over the truck.

Q. A day or two later when you returned, they didn't, turn over your truck?

A. They did not.

They didn't even try to turn it over, did they? Q.

No. sir. A.

John Stetler, was he the man said he would turn over your truck!

No, it was one of the other boys.

Who was it?

I couldn't say. The remark was made, and I couldn't say who said it.

897 Q. You can't tell us so we can talk with the gentleman who made that kind of a threat?

No, I can not.

On December 30, the following day, you were not stopped at any time?

A. No, sir.

On January 1, 1942, at 8 A. M., when you returned from some bakery, you said you were stopped, and they told you you couldn't go in with your material, is that right?

A. That's right.

Q. Did you try to go in?

- I told them what the boys told me the night before, that it would be satisfactory for me to go in at that time, and they would hold a meeting and decide what was to be done further.
 - So you went right on in at that time?

A. Yes, sir.

This place, at Couri's fruit store, you say you were approached there by Verd Kirk, is that right? A. Yes, sir.

Where is Couri's fruit store?

On West Washington Street. I couldn't give you the address.

Was anybody else around there?

- The two laborers I had with me were sitting in the A. truck.
- They were sitting in the truck, but they didn't hear what Verd Kirk said to you, and you said to him?

A. No.

In fact, nobody heard that except you and Kirk, isn't that right?

That's right. A.

You say that Kirk said if your wife didn't quit criticiong them they were going to get her?

That's right.

Q. Did he threaten to get you?

No. sir.

Did he say he was going to do anything about you Q. for that?

A. No, he didn't.

In fact, nobody has ever contacted your wife with reference to what she said or didn't say, isn't that true?

A. That's true.

Mr. Knoblock: That's all.

899 KENNETH L. HARRIS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

Kenneth L. Harris.

Q. Where do you live, Mr. Harris?

Route 2, Washington. A. Q. How old are you?

A. Thirty-one.

Q. What is your business or occupation?

A.

Q. How long have you lived in Washington? Near Washington?

A. Around thirty months; two years and a half.

Are you employed now by the T. P. & W.? Q.

A. Yes, sir.

Q. When were you employed?

July 17, 1939.

Q. You have been with them since, have you?

A. Yes, sir.

Q. Where did you work before that?

A. C. B. & Q. at Hannibal.

Have you always been in railroad work since you Q. left school?

Yes, sir.

What is the particular line of work you'do for the T. P. & W.?

Well, general machine work on machines and the engine itself.

Q. Now, when you travel from your home to the T. P. & W. East Peoria yards. what road do you use?

900 A. That's highway 24.

Q. And you use the lane that leads from that to the yards?

A. Yes, sir.

Q. It has been described in this case?

A. I believe it has.

Q. That is the lane of the T. P. & W.?

A. Yes, sir. Yes, sir.

Q. Directing your attention to that place on December 31, 1941, did you have any difficulty in going to work from your home in using that lane?

A. Yes, sir.

Q. Tell the court what happened.

A. Well, the pavement was very slick that morning, and you couldn't drive very fast at all, and coming down to the lane there, when I started to turn in, there was a group of fellows there, I would say in the neighborhood of ten, maybe twelve. It was dark yet in the morning, and when I pulled through or pulled up to them and started on through there, they hollered for me to 'top, and I stopped within about a car length of where they were at, but someone struck the back of the car in the left hand back corner near the rear window, and the left side and the right side window, or back window, they was pushed in until the molding was knocked loose on the inside, and there was a dent in the inside right underneath the outside, and seratched down across the turtle back.

Q. The turtle back?

A. Yes, or the trunk lid, whichever it would be called.

Q. How did they do this? How did they damage your car as you have indicated?

901 Q. It must have been a club. Mr. Knoblock: I object to that.

The Court: If you know.

Q. Did you see them have anything?

A. They had sticks or clubs, pieces of approximately 1 x 4 made into paddles like. The bottoms were hewed off into a handle form.

Q. How long were these paddles? Boards shaped up into paddles?

A. Well, around three foot, I would say. Q. How many had those instruments?

A. I couldn't say right offhand, but there were—there was several. I couldn't say exactly how many. I would say better than four.

Q. Did you attempt to stop your car when they told you

to stop?

A. I was trying to slow up and stop, yes. I stopped within five feet of where the picket line was, or the group of fellows was.

Q. Was there any reason you couldn't stop before that?

A. It was slick.

Q. After this happened and they dented and mashed up

your car, what did you do?

A. I got out and went back to see how much damage was done, and tried to talk it over with the fellows, but they didn't seem to want to talk about it at all. They went on to say the next time I didn't stop the car would be rolled over in the ditch, and everybody else that tried to go through without stopping. I had stopped the two evenings before going out. There hadn't been a word said about mestopping. I slowed up the two mornings before that,—that was Tuesday and Wednesday morning—and there

wasn't a thing said about me coming to a complete 902 stop, but the car—they walked right alongside of the car while I was coming through there and trying to

stop.

Q. Both sides of the car?
A. Both sides of the car.

Q. Did you recognize the men in the group so that you could identify them?

A. I couldn't recognize any of them.

Q. Was it light or dark?

A. It was fairly dark. It was around 6 40 in the morning, something like that. I go to work at 7, and it was about twenty minutes before.

Q. Did you recognize them in any other way? A. No. I couldn't recognize any of them.

Q. Were they at the picket line? Is that where they were stationed?

Mr. Knoblock: I object. If he can't recognize, how can

he say whether it is a picket line?

Q. Where were these men with reference to the entrance to the lane from this road 24?

A. They was at the end of the lane, between the pave-

ment and the fence line.

Q. And did you observe them there in day time other times?

A. Yes, they were there continuously.

Q. Were the men that bumped your car this time you

have indicated at the place you saw men on other occasions?

A. Yes, sir.

Were they blocking the road in any way?

I couldn't say that they were blocking the road other than by standing in it. It wasn't any form of anything to stop traffic other than the men standing in the road. 903 Q. How did they stand there? That is what I want

you to tell.

There was a line clear across.

At the end of the lane?

A. At the end of the lane, yes, sir.

Immediately adjoining this hard road?

A. Yes, sir.

Was that the condition on the morning that they struck your car and injured it?

A. Yes, sir.

How long did you see these men remain there? That is on the various trips in and out. How many times did you see them there after December 31?

A. They were there on Friday and Saturday, but not

very many of them.

Q. Saturday morning?

There was four there Friday morning, Yes, sir. and three Saturday morning.

Since that have there been any pickets there? Not out on the road. Not out on the road.

Mr. Heyl: I guess that's all. You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Harris, you say on the 29th and 30th of December of last year you went in and out of that lane there that leads to the roundhouse of the T. P. & W. to Route 24, and you went back and forth, and there was nothing said, and you were not stopped in any way?

A. Nothing, only coming out. I stopped each night

coming out.

Q. Because of the "Stop" sign?

A. That's a highway.

Q. But no one stopped you or said anything to you those two days, is that right?

They hollered for me to stop or slow up.

You didn't do it?

A. I slowed up, yes.

Q. You slowed up, but you kept on going?

A. That's right.

Q. Now, on this day, December 31, you don't know anyone that was there that morning?

A. I didn't recognize a soul.

Q. And the T. P. & W. has a sort of watch house there where there are people on duty most all the time, too, don't they?

A. Yes.

Q. What side of the road is that situated on?

A. That's on the left hand side as you are going in the lane.

Q. After this thing occurred to your car, you say you got out of the car?

A. That's right.

Q. And you tried to talk to some of the men there?

A. Yes.

Q. And you still didn't recognize anybody?

A. No, sir.

Q. You couldn't tell us who was present there at that time?

A. I really couldn't.

Q. And at no time have you ever seen that lane blocked in any manner or form, other than a human being standing in it?

905 A. That's right.

Q. Did you notice a flood light there on that morning?

A. I believe there were a light there.

Q. How big a light was it?
A. I couldn't say as to that.

Q. Could you see any man as a result of the light given off by that flood light?

A. They were all in a group and back, to a certain ex-

tent, from where I was at.

Q. Did that flood light—Was it more or less pointed down the lane toward the T. P. & W., or did it light the road to the hard road?

A. It doesn't come to the hard road.

Q. .The flood light doesn't light out to the hard road?

A. Not to my knowledge it doesn't.

Q. Now, you say—As I understood it, when you first took the witness stand, you had understood that this lane leading to this Route number 24 had been described in this case before. Did you understand that?

I didn't aim to state that I said that it had been described before. If I did, it was a mistake on my part. Mr. Knoblock: All right! That's all.

906 RAYMOND PAUL AVERY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

A. Raymond Paul Avery.

Q. Where do you live?

- Ă. I live at Washington, Illinois.
- Q. And in the village or city? A. In the City of Washington. Q.

And where do you work? A. For the T. P. & W.

What line of employment?

A. I am roadmaster.

- Q. How long have you worked for the T. P. & W.?
- Well, between eighteen and nineteen years. A. And were you employed December 31, 19:11

A. I was.

And when you go to the T. P. & W. yards to begin your work, how do you reach the yards from your home?

A. Well, most of the time I go by my automobile if I am not going to ride out on the train.

That is on Route 24?

A. Yes.

Do you recall on the day I have indicated, December 31, you used the lane leading from the yards to this hard road?

Yes, I used it several times that day.

Q. Will you tell us what happened at any time?

A. Well, I wasn't molested any time until around, 907 oh, would say it might have been 3:20 or 3:30, somewhere along there, in the P. M., and I went to go out the lane with my car, and there was a car that blocked the At that time there wasn't any special agents up there because they was called down to another place, and John Feuger come down to my car there, and he says, "I hear you have been firing an engine." I said, "No, I haven't been firing an engine." He said, "Well, don't lie to me." I said, "I'm not." He said, "I want to warn you. You want to stay off of those engines and cabooses until this thing is settled. It will be too bad for yourself and your family", and right after he got done saying that Red Wilson, Hustler Wilson, and Dave White and Mc-Mullen come up there,—

Mr. Knoblock: Let me get those names.

The Court: Go ahead!

A.—and they started all talking at once. There was two or three others with them that I didn't know, at least I couldn't call their names afterwards, because I kind of got excited myself, and they started making threats. I can't remember all they said because they all talked at once.

Q. What did you hear them say? What was the sub-

stance?

A. Some of them said (I don't know who it was), "We are going to get rough." He said, "You know what happened down there a while ago to that switch engine." Then somebody says, "Stay off of them engines and cabooses."

Mr. Knoblock: Said what?

A. "Stay off of those engines and cabooses."

Q. What switch engine did they refer to, if you know?

A. They didn't say.

908 Q. Did you know what they were referring to? A. Yes, I knew what they were referring to.

Q. What one was it?

Mr. Knoblock: I object.

Mr. Heyl: Let's understand one another.

The Court: The objection will be sustained unless this man saw the circumstances.

Q. Do you know what engine was tied up that afternoon before that?

A. No, I don't know the number of the engine.

Q. Do you know the incident?

A. Yes, it was down here by the river bridge.

Q. That was by Swords' Siding?

A. Yes, sir, right there at the derail. Q. That had happened that afternoon?

A. Yes, sir.

Q. And prior to this time you had talked about it?

A. Yes.

Q. These three men you have mentioned, Wilson, White, McMullen and John Feuger you first mentioned, are all former employees of the T. P. & W., aren't they?

Yes.

Were the other men that were with them that you haven't named, were they also former employees?

A. As I say, I don't know because they was all bunched

together right in the window of my car.

Q. How many were there bunched together as you have indicated?

A. I wouldn't went to say any definite number because I don't know. I couldn't tell you that.

Q. Could you form an opinion?

A. I imagine there was six or seven. That is your best judgment, is it?

A. Yes.

Q. Were they all around your car?

No, they was just on one side. Q. Did they have anything in their hands at that time, any of them?

A. I never saw anything in their hands:

Mr. Heyl: I guess that's all.

Cross-Examination by Mr. Knoblock.

Q. When you saw John Feuger there, he was there all by himself?

Down by my car at that time he was.

That is what I am referring to. When you first saw him, he was there by himself?

A. Yes, because-

Q. He was there by himself?

A. He was down by my car by himself.

Q. He just asked you if you had been firing an engine, and you said, "No"?

A. Yes.

Q. And he said, "Don't lie to me"? Is that what he said?

A. Yes.

And he said, "You had better stay off until it is settled"?

He said, "You had better stay off the engines and cabooses until this thing is settled."

Q. And then Wilson and White and McMullen come up, is that right?

They come up after he had told me he just wanted to warn me if I didn't stay off.

910 Q. Answer my question: Did Wilson, White and McMullen come up to where you were?

A. Yes.

Q: Did any of them at that time shake any club at you or their fists or anything else?

A. No, sir.

Q. Did they permit you to go on your way?

A. After-

Q. After they had talked to you?

A. That's right.

Q. Did they threaten any personal violence to you?

A. Only what I have mentioned is all.

Q. But, other than what you said here, they didn't lift their hands in any way to harm you, is that right?

A. No.

Q. They permitted you to leave in just a few minutes?

A. Yes, sir.

Q. Had you been running any engines over there?

A. No. sir.

Q. Then everything that they said with reference thereto didn't have any application to you, is that right?

A. No.

Q. What?

A. No.

Mr. Knoblock: All right!

The Court: Is that all? Call the next.

911 PHILIP OWEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Philip Owen.

Q: How old are you?

A. Thirty-seven.

Q. Where do you live? A. 609 Commonwealth.

A. 609 Commonwealth, Peoria. Q. What is your business or occupation?

A. Roundhouse foreman.

Q. How long have you had that job?

A. Eight years.

Q. That is with the T. P. & W.?

A. Yes, sir.

Q. Are you familiar with the engines and understand them that are owned by this railroad?

A. Yes, sir.

Q. You handle them every day, do you!

A. Yes, sir.

Q. Now, do you know where the blow-off cock is located on the locomotives?

A. Yes, sir.

Q. Where is it located?

A. On what class of locomotive?

Q. On the 41, the one that was used on January 2, 1942.

A. On the 41 the blow-off cock is located on the right front corner, and on the left side on the back corner.

Q. On both sides of the engine?

A. Yes, sir.

Q. Where is it located with reference to the ground! Is it near the ground, or is it high up on the locomotive! Can you tell us about that!

A. The pipe extends on the left side approximately two

feet from the ground.

Q. On the right side?

A. On the right side it is on an even keel with the fire box mud ring. That would be about shoulder high.

Q. You use the lane leading to the company's round-

house and yards in East Peoria, do you!

A. Yes, sir.

Q. Traveling from Peoria to your place of work?

A. Yes, sir.

Q. And on December 31, 1941, did you have any difficulty in going in that lane and proceeding to the round house?

A. When I turned in the lane,-

Q. What time of day was it, first?

A. It was about 6 o'clock.

Q. In the morning?

A. In the morning.

Q. All right!

A. When I turned in the lane, something struck the rear window of my car, breaking it out.

Q. All right! Where was that with reference to the

entrance to the lane?

A. Just after the car had pulled in off of the high-913 way or hard road. Q. Did you see anyone there?

A. There was a group of men standing around the entrance.

Q. What window did they break in your car?

A. The rear window.

Q. The rear window in your car?

A. Yes, sir.

Q. Did you stop?

A. It was icy, and the car went on down the little slope before I could stop it.

Q. Did you go back ?-

A. I did not.

Q. You got out, though, did you?

A. I opened the door and looked back, and I couldn't see anything.

Q. Did you see any of the men when you looked back?

A. No, sir,

Q. Where were they when this window was broken? A. They were alongside of the car on both sides.

Q. And where were they with reference to the place the picket line was located over there on that lane?

A. They would be right along the hard road slab.

Q. Is that where they were?

A. Yes sir.

Q. Did they say anything to you?

A. They called to me to halt when I turned in.

Q. Did.you halt?

A. I couldn't halt on the ice. It was very icy.

Q. Then the back window was knocked out?

A. Something struck it, yes, sir.

914 O. Did you have any further talk with these men?
A. No. sir.

Q. Now, on these blow-off cocks on the engine, the 41, are there separate valves for the two cocks?

A. Yes, sir.

O. Where are they located? The valves located?

A. They are manually operated from the cab.

Q. Where are they located? Where are the valves located?

A. The valve is located out on the side of the mudring, and operated by levers extending back in the cab.

O. Which side of the cab?

A. On both sides. The left side operates the left, and the right operates the right.

Q. Can a man operate both of them at the same time?

A. One man can not.

Q. Because the levers are not close enough together, is that it?

A. The levers are on the outside wall of the cab.

Mr. Heyl: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. If there were nine men in the cab, two or three of them could operate both of them at the same time, couldn't they?

A. Only one man could operate one cock.

Q. I am not asking about one man. I said if there were two or three men working on each blow-off cock, they could both be operated at the same time, couldn't they?

A. Yes, sir.

Q. Now, on this occasion of December 31, 1941, you 915 said you made a turn to the right there to go down this lane, is that right?

A. Yes, sir.

Q. How far did you go down the lane before you stopped?

A. About three car lengths.

Q. About how many feet would that be?

A. I would judge thirty feet.

Q. Was it dark there? It was 6 A. M. in the morning, was it?

A. Yes.

Q. Was it dark there?

A. In the lane?

Q. Yes.

Q. The fact of the matter is, it was still very dark, isn't that right?

A. I never noticed.

Q. You never noticed?

A. No.

Q. When you looked back, I will ask you if it was dark.

A. I could see cars passing on the highway. There was a car with a light on up across from the lane entrance.

Q. You saw a car with its lights on passing the lane entrance, but could you see the ground up to the highway!

A. Yes.

Q. Where did that light come from that you could see that?

A. I don't know.

Q. You don't know who was on this location that morning, do you?

A. No, sir.

Q. You don't know what hit your window, do you?

A. No. sir.

916 Q. And you don't know who did it?

A. No, sir.

Q. You are unable to tell us whether any of the men you noticed around there were former employees of the T. P. & W. or not?.

A. That's right.

Mr. Knoblock: That's all.

J. P. McLAIN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. J. P. McLain.

Q. Where do you live? A. Colchester, Illinois.

Q. What county is that in?

A. In McDonough County.

Q. What is your age?

A. Fifty-seven.

Q. What is your business or occupation?

A. Retired farmer.

Q. Were you employed as a special agent on this railroad the last week of December, '41?

A. I was.

Q. Where were you stationed?

A. At the lane entrance to the yards; pavement.

917 Q. And on December 31, 1941, were you on duty there? That is the day before New Year's.

A. 31st? I was on duty there that night.

Q. At night?

A. Yes, sir.

Q. Where were you stationed there while you were on duty?

A. Well, there was a small shanty, house, right at the end of the lane, about thirty feet off the pavement, thirty or forty feet off the pavement.

Q. Is that in the lane, or where is it?

A. At the end of the lane on the east side.

Q. Was it in the lane or on the property beyond the lane?

A. I would say it was somewhat in the lane, and mostly on the property back there.

Q. That is the property of the road?

A. As I understand, it is.

Q. Were you there the night before, December 30?

A. I was there the 29th and 30th both.

Q. And what did you observe there as to the number of men that were picketing there?

A. Quite á few men.

Q. How many?

A. It's pretty hard to say exactly.

Q. Well, could you form any opinion as to the number!

A. Yes. I would say fifteen to twenty men.

Q. What were they doing there? We will take the first night. What were they doing?

A. Stopping all cars that drove up there from either side.

Q. You mean going into the property,-

918 A. And out.

Q. -and out of the property?

A. Yes, sir.

Q. Did they do anything else?

A. What do you mean? "Anything else"?

Q. Did they do anything else there, or just stop cars! Did they have anything else to do? That is the first night I am talking about.

A. That is the night of the 30th?

Q. Yes, sir.

A. Well, they stopped my car, and threatened to tip it over.

Q. Just what did they say to you?

A. I couldn't repeat the exact words they said to me.

Q. Were you going in or coming out !-

A. I was coming in.

Q. What time of day was it?

A. Possibly 5:30.

Q. In the evening?

A. Yes, sir.

Q. What happened? Just tell the court in your own language what happened.

A. Well, they stopped me, a bunch of them got hold

of the side of the car, and raised it about two feet and a half off the ground, and a special agent named Thompson explained I was a special agent and not a train worker of any kind, and they let me go in.

Q. Did you know the men--

A. I did not.

Q. -that took hold of the car?

A. No, sir.

919 Q. Were they men on the picket line?

A. Yes, sir.

Q. Did anything happen after that? That is that same night.

A. I don't recall anything out of the ordinary that

night.

Q. Did you park your car near there to go on duty?

A. No. I took the car down to the yards.

Q. And walked back?

A. Yes, sir.

- Q. On December 30, between 9 and 10 o'clock, were you there?
 - A. I was.

Q. Did anything happen at that time?

A. I couldn't say as anything out of the ordinary—

Q. Either evening was there anything happened with reference to nails?

Mr. Knoblock: I object to this. He said noting happened. That is very leading.

The Court: I think he may answer. He called his at-

tention to it.
Mr. Hevl: That's all.

The Court: That isn't leading.

Anything happen regarding nails?

A. Yes.

The Court: Tell about it.

A. There was nails put under cars.

Q. What night was that?

A. That was the 30th.

Q. Just tell the court what you observed with reference to that transaction.

A. Well, that's about all there was to it.

920 Q. Tell who did it, and how it was done. You can't guess at it.

A. The pickets was the ones that did it. I wouldn't

know them.

Q. Who were they? Where did they come from? From the corn fields, or where?

A. There was a bunch of pickets at the roadside the

entire night.

Q. How many pickets were there?

A. Fifteen to twenty.

Q. What did you see them do?

A. Stop cars.

Q. What about the nails you mentioned a moment ago?

Mr. Knoblock: Objection.

The Court: What did you see them doing in regard to any nails, and who did it?

A. It would be impossible for me to say the guys be-

cause I don't know their names.

The Court: Do you know anything about nails?

A. I know there was nails put under cars.

The Court: Did you see anybody put them under there?

A. Yes, sir.

Q. Did you see anybody putting nails, and where were the nails put?

A. The car I remember distinctly belonged to Larry

Howell.

Q. Who is he?

A. Special agent. They stopped his can and, while they was talking to him, a man stooped down and put them under the car.

Q. What kind of nails?

A. Roofing nails.

Q. Do you have any of them?

A. I have.

Q. Where did you get them?

921 A. Along the lane and in the shanty.

Q. After they had been put down in this manner, is that the way you got them?

A. After the snow went off, I picked them up, yes.

Q. If you have got them with you, let's see them.

A. (Witness complies.)

Q. Is this package here that contains some nails the nails that you picked up over there?

A. Yes, sir.

Q. In the lane?

A. Yes, sir.

Q. When did you pick them up?

A. I picked them up when the snow was off, about the 31st.

Mr. Heyl: Mark this package as an exhibit, will you (to reporter)?

Mr. Knoblock: I object to this. That indicates several

days later, and it is not material.

The Court: Did you get a puncture out of it?

A. I got a puncture.

The Court: Did this other fellow get a puncture?

A. I don't know. I had a flat tire between here and Peoria.

Q. This carbon has been marked "Exhibit 19" con-

taining these nails.

Did you see how they kept these nails, and what they took them out of?

A. They have been under my care.

Q. I mean the nails these men had when they put them out.

Did you see them take it out of anything?

A. It was night. I couldn't see where they were taken from.

Q. How did you pick up these nails that are con-922 tained in this carton marked "Exhibit 19"?

A: On the lane.

Q. Where?

A. Along the lane, with my hands.

Q. With your hands?

A. Yes, sir.

Q. Are these the same nails you saw them put out there?

A. Yes, sir.

Mr. Knoblock: Oh, I object to that.

Q. How many times?

The Court: I think the objection will be sustained to that. I don't know how he would know.

Q. How many times did you see them put nails out

there on the road?

A. I seen them possibly two or three times. Those nails were put out on the night of the 29th.

Q. How do you know that?

A. How do I know it?

Q: Yes

A. Because the Cars— We discovered them with the lights of the cars.

Q. You saw them by the cars after they were put out?

A. Yes, by the cars.

Q. About 9 o'clock?

A. Yes, sir.

When did you pick them up?

A. The next day.

At the same place? The same place where you saw them the night before?

A. We swept them out of the road that night.

Q. The next day you picked them up, is that it?

A. The next day, yes, sir.

When did you sweep them out with reference to the time you saw them from the lights of the cars?

About 9, 9:10, somewhere in there.

How many men were engaged in putting out these nails in front of cars at various times?

A. Well, I never seen but one man at a time putting out nails in front of cars.

Do you know the name of this man?

I do not know.

Will you tell us how you saw them put them out? What did you do when they put the nails out?

Mr. Knoblock: I object.

The Court: I think he may answer.

A. In the case where I seen them stoop to put nails under cars?

Using their hands or feet?

A. (Witness illustrates.)

Q. What is it? Bent over.

Q. And threw them under the wheel? Is that what you are trying to show there?

A. Yes, sir.

Mr. Heyl: We offer, in connection with the testimony of this witness, these nails, PLAINTIFF'S EXHIBIT 19.

Mr. Knoblock: We object.

The Court: I think they may be admitted.

Is that all with this witness?

Mr. Heyl: That is all.

Cross-Examination by Mr. Knoblock.

Q. Mr. McLain, you say you first went on duty the night of the 29th?

That's right.

Outside of that one occasion you have referred to on December 29, you were never stopped or molested at the head of that lane by anyone, were you?

A. I wasn't bothered on the 29th. It was the 30th.

Q. It was the 30th?

- A. Yes, sir.
- Q. Speaking—excepting on that one occasion, you were never stopped or molested in any way, were you?

A. I was never molested only verbally.

- Q. There was never anything done toward you, such as shaking a fist or throwing a club or rock or anything of that kind?
 - A. Never anything done only verbal abuse.

 Q. Verbal abuse is all you got, is that right?
 - A. Correct, except that one night, the night of the 30th.

Q. What hours did you work over there?

- A. From 6 to 6.
- Q. 6 o'clock at night until 6 in the morning?

A. Yes, sir.

Q. What day was it you saw Larry Howe there?

A. The night of the 30th.

Q. What time?

A. Around 9, 10 o'clock.

Q. And where was Larry Howe's car stopped, or was it stopped?

O25 A. It was stopped at the "Stop" sign as you go on the pavement.

). Where were you situated at that time?

- A. At the watchman's shanty about twenty feet from there.
- Q. Which side of the car were these men around Larry Howe's car?

A. East side.

Q. And now far were you from the east side of Larry Howe's car?

A. About twenty feet.

Q. And you don't recognize, nor do you know, any of the men on duty at any of the times you were there, is that right?

A. I do not know.

Q. Didn't I understand you to say on direct examination you picked these nails up after the snow went off?

A. After some of it had went off, after it had melted, and the cars had been along there.

- Q. The snow didn't go off for three or four days?
- A. Yes, it did, on that south slope along that lane.

 Q. How long did it take for the snow to go off?
- A. I couldn't say exactly when.

Q. What is your best judgment?

A. Well, it seems to me like it melted some on the 31st and more on the 1st.

Q. I see. And what days did you see these nails por

down, if you can pick out any day?

A. These nails on the lane was put on the 29th, might of the 29th.

Q. They were all put out on the night of the 29th?

A. Yes, sir, in the lane.

Q. You couldn't see where the nails come from, could you?

A. No.

Q. Could you—how dark was it there just as you 926 went off the pavement?

A. Which night?

Q. On the night of the 29th.

A. There was no light beyond the Nickel Plate Railroad.

Q. And did you see those nails after you got on the ground there in that darkness from that distance?

A. The first car that come along spied them.

Q. You didn't know what was put there until the car went along?

A. We took our flashlights and went up there and

found them.

Q. How much time after you saw the man make that motion before you saw any nails on that—

A. I don't think I saw a man make a motion on the

road.

Q. I thought you made a motion like that (illustrating.)

A. Not on that road. Q. Some place else?

A. That is at the head of the lane.

Q. What I am talking about is the head of the lane.

Mr. Heyl: That isn't what he is talking about.

Q. Isn't that where your shanty is located?

Mr. Heyl: You have him down to the Lake Erie crossing.

The Court: Get him back.

Q. Where is your shanty located?

A. On the night of the 29th,—

Q. I asked you where your shanty was located. I am not asking about the 29th. It was the same place every night, wasn't it?

A. No.

Q. That shanty was moved around from night to night?

A. There was no shanty at the head of the lane the night of the 29th.

927 Q. When was it moved up there?

A. The 30th.

Q. Where were you stationed the 29th?

A. At the railroad crossing.

Q. Which crossing?

A. Nickel Plate, I guess. Nickel Plate trains run over it.

Q. How far was that Nickel Plate crossing from the head of the lane where the hard road goes by?

A. About a hundred and fifty yards, a hundred yards.

Q. How far from the Nickel Plate crossing did you say you saw Larry Howe's car come to a stop that night?

A. It was not there. It was at the head of the lane

on the night of the 30th.

Q. On the night of the 30th. You were in the shanty the night of the 30th?

A. I was at the head of the lane the night of the 30th

in the shanty.

Q. Didn't I understand you to say you saw some tacks put down on the 29th?

A. I said they were put down on the 29th.

Q. You weren't in your shanty? You were down at the Nickel Plate crossing?

A. I was.

Q. You didn't see anybody put anything down the 29th?

A. We have a searchlight that shows up the road about fifty yards.

Q. But you didn't see anybody put anything down the night of the 29th?

A. No, not the 29th; no, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

928 Call the next witness.

CARL W. SUND, called on behalf of the plaintiff, and having been first duly sworn; testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Carl W. Sund.

Q. Where do you live, Mr. Sund?

A. 512 Roosevelt, Creve Coeur, Illinois. Q. What is your business or occupation?

A. I have been night yardmaster for going on three years.

Q. At the T. P. & W.1

A. Yes, sir.

Q. And on December 30 or 31, where were you stationed, or where were you working?

A. December 31?

Q. Let's take December 30 first.

A. At the yards, East Peoria.

Q. Do you use the lane leading to Route 24?

A. Yes, sir.

Q. Did you travel that lane that evening in going home?

A. Yes, sir.

Q. About what time?

A. About 6 P. M.

Q. What happened? What did you observe there, first?

A. Well, I come up the lane, and there was quite a bunch of fellows.

929 Q. How many!

A. Oh, I would say about fifteen or twenty.

Q. Did you recognize any of them? -

A. Yes, I did.

Q. Whom did you recognize? A. C. L. Brown and Objartel.

Q. Is that the name of the man? Objartel?

A. Yes, sir.

Q. Do you know his given name?

A. A. Objartel; Objartel, I think it is.

Q. A. Objartel?

A. Yes.

Q. Who else?

McMullen.

Do you remember his first name?

A. No, I don't know his first name.

Recognize any of the others? Q.

That's about all. A:

What did they say to you! Well, when I stopped there was quite a few that come right up to the car, and one of them said, "We have had about enough of this. Let's turn the car over", so I had the window down, and I said, "Well, now, wait a minute here! Let's talk this over a little bit" and they seemed to be intent on turning the car over, and the fellows that I knew were in the back, and they kind of crowded to the front and come next to the car, and said, "No, we won't have that. We have known him quite a while, and he has always been a pretty good fellow. We are not going to do it", and then they crowded, the three I knew,

930 crowded up next to the car. They told me I had been

doing work that day I wasn't supposed to do, and I told them I didn't see why, being as I was yardmaster. thought I had a right to do the work which I had been doing, and they told me just what I was supposed to do, and what I wasn't supposed to do:

Tell us what they said. We don't know what they

told you without your telling us.

A. What they said?

Q. ·Yes.

They told me if I did the work I had always done, there wouldn't be a word said, it would be O. K.

What else did they tell you you couldn't do?

They told me I had been doing the work down the street with a switch engine, such as pulling the freight house and pulling two or three industries, Trunk Olson and Riverside and Daly's. They said I had never done that work before, and that I wouldn't be allowed to do it now.

Q. What did they say would happen if you did do it?

A. They said it would be bad for me if I did it any more.

Anything else happen that night? Q.

No, sir, they let me go on my way. Is that the only incident that occurred?

Yes, sir, that's all.

Q. Any other day that you had any trouble?

A. No, sir.

Mr. Heyl: All right! Cross-examine?

931 Cross-Examination by Mr. Knoblock.

Q. They said to you if you did some other work of a different character it would be bad for you, is that right?

A. Yes, sir.

Q. And that is all they said in that regard?

A. That's all.

Q. And Brown and Objartel and McMullen came up there, and said you were a good fellow, and they always liked you?

A. Yes, sir.

Q. There was nothing done untoward regarding your

car or person in any way?

A. No. I thought they were going to turn the car over. They took hold of the car, the fellows I didn't know. And when these fellows I knew saw they might turn the car over, they come up to the front.

Q. Nothing was done with reference to turning your

car over?

Mr. Heyl: I object. He said they took hold of it and lifted it up.

Mr. Knoblock: Let the witness testify.

The Court: Do you want to withdraw the question, or want it read?

(Question read by reporter.)

The Court: You may answer that, whether anything was done toward turning it over.

A. It wasn't hurt in any way.

Q. You weren't hurt in any way, were you?

A. No, sir.

Q. And you have never been before or since that occasion?

A. No, sir.

932 The Court: Is that all with this witness?

Mr. Knoblock: Yes.

JAMES LANTZ, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Jame Lantz.

Q. . Where do you live?

A. New Philadelphia.

Q. What is your business or occupation?

A. Engineer.

Q. What is your age? .

A. Forty-six.

Q. How long have you been working for the T. P. & W.?

A. I came there the 20th of last month.

Q. Had you worked there before?

A. Yes, sir.

Q. When?

A. 1939 'til 1929.

Q. Now, did you drive a car through the lane leading to the yard?

A. Yes, sir

Q. When?

A. About 3:45 Monday evening. Q. That was December 29, 1941?

A. Yes, sir, '41.

933 Q. Was anyone with you?

A. No, sir.

Q. What happened?

A. Well, there was four men rushed out at the car, and tried to push it in the ditch.

Q. What did they do? Tell what you saw them do.

A. One of them pulled the door open.

Q. What else?

A. That's all.

Q. How do you know they tried to push it in the ditch?

A. They wouldn't have grabbed the fender and pushed on it, would they?

Q. Who were these men?

A. I don't know.

Q. Did you say anything to him?

A. No.

Q. Did they say anything to you?

A. When he opened the door and run his head in, I told him to get back out.

Q. Where did these men come from?

A. From a shanty on the right side of the lane as you go in.

Q. Leading from 24 into this lane?

A. Whatever the route is.

Q. From Peoria east, is that right?

A. Yes.

Q. Is that the road you are talking about?

A. The one that goes down to the office.

Q. This shanty was on which side of the lane as you started to go in the lane?

934 A. Right hand side.

Q. I believe I have asked you: You did not know who they were?

A. No, sir.

Q. Was that the picket line?

A. Supposed to be, I guess. Q. How many were there?

A. I seen four.

Q. Did you have any difficulty there any other time!

A. No, I haven't.

Q. Did you go in and out after that day?

A. I went out Sunday.

Q. Last Sunday?

A. Yes. 9

Q. January 3? It was after the restraining order, is that what you mean?

A. Yes, sir.

· Q. Is that correct?

A. Last Sunday.

Q. Now, were you on a train, on extra 42 west, on December 31, 1941?

Mr. Knoblock: Extra what? (Question read by reporter.)
Q. On December 31, 1941?

A. No, I wasn't.

Q. Well, were you at Crescent City at any time?

A. I came from the east.

Q. West?

A. West, yes. That is extra 42, that's right.

Q. West from Effner?

A. Coming from the east. That's right.

935 Q. What did you observe at Crescent City?

A. I saw a light out over there. Somebody had broken the lights out of the switch stand.

Q. What side of the town or village?

A. East end.

Q. Which track?

A. Crescent City was on the south side.

Q. And where is that? The switch leading from the side track to the main track?

A. That's right.

Q. On the same day or night did you observe anything at LaHogue?

A. On the north side the switch light was broken out.

Q. Broken out?

A. Yes, sir.

Q. Can you describe how it was broken out?

A. Looked like it had been broken out with a rock or something.

Q. With what?

A. A rock or something. Mr. Knoblock: I object.

The Court: Yes.

Q. What part was broken?

A. The glass.

Q. All the glass?

A. On the one side I could see.

Q. Anything else you observed at the switch?

A. No.

Q. Where were you when you made these observations?

A. On the engine.

Q. On the engine?

936 A. Yes.

Q. Passing there!

A. Passing there on the engine.

Q. What were you going on the engine?

A. Fireman that trip.

Mr. Heyl! That's all. You may cross-examine.

The Court; Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Lantz, you don't know who did it? Anything to those switch lights at any time?

A. No, I don't:

Q. You have no knowledge other than what you happened to see?

A. Only what I happened to see.

Mr. Knoblock: That's all.

The Court: I think we will stop at this point, gentlemen.

Trial Adjourned at 5:20 o'clock P. M..

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January 14, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

Mr. Knoblock: I want to notify the court I received this notice to produce documents. I haven't read it, don't know what it means or what it requires, and I want a reasonable time.

Mr. Elliott: We probably won't need those until to-

ward noon.

The Court: We will have to do the best we can. Let's go along with the witnesses. We won't require an impossibility.

Go ahead!

Mr. Elliott: I want to ask him one question. I am recalling Mr. Heilman.

JOHN H. HEILMAN, recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. Mr. Heilman, what is your name?

A. J. H. Heilman.

Q. You are the same J. H. Heilman who was on the stand yesterday,—

A. Yes, sir.

938 Q. —and the day before? And you are trainmaster and chief dispatcher?

A. That's right.

Q. I will ask you, Mr. Heilman, if you know the cars that are put into the different cuts that have been testified about in this case in extra 43, extra 41, and so forth?

A. That's right; I do.

Q. You may look at Plaintiff's Exhibit 18, which has heretofore been offered in evidence, and state whether or

not the cars as listed in this Exhibit 18 in the different trains as headed were, to your knowledge, placed in those respective cuts of cars?

A. Yes, sir, they were.

Q. And were the cars that are listed in this Exhibit 18 under extra 43 west and the P. & P. U. delivery in the extra 41 west actually put in those respective cuts and trains?

A. Yes, sir.

Mr. Elliott: That is all.

The Court: Cross-examination?

Mr. Knoblock: May we see those, please? (Examines same.) No cross-examination. Mr. Elliott: That's all, Mr. Heilman. This 18 has been admitted, hasn't it?

The Court: Yes.

939 CLAYTON PEARSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Clayton Pearson.

Q. Where do you live?

A. I live at 117 Apple Avenue, Creve Coeur.

Q. How old are you? A. Twenty-eight.

Q. What is your business or occupation?

A. Assistant manager of the Steak and Shake.

Q. Where is the Steak and Shake?

A. 1200 West Washington, East Peoria.

Q. Where is that with reference to the east end of the Peoria bridge over the Illinois River?

A. That's directly at the east end of it.

Q. And how far is your place from the railroad of the T. P. & W.?

A. Oh, about eighty feet from the tracks, I'd say.

Q. And you were subpoenaed here as a witness, were you,—

A. That's right.

Q. -by the United States Marshal?

A. . That's right.

Q. Do you recall in the last week of December, 1941, a

train or an engine and cars on the T. P. & W. approaching the Illinois River bridge being stopped on that occasion!

A. Yes.

Q. Do you know what day it was?

A. It was two days before New Year's, I believe.

940 Q. What time of the day was it?

A. Approximately 3 o'clock in the afternoon. . Where were you with reference to that train?

A. I was in our biggest front window.

Q. How far, in feet, from that place to where the engine was stopped?

A. Well, it wouldn't be over a hundred, hundred and

fifty feet.

Q. And will you tell the court just what you observed from the first time you looked out there until it was all

over? Just tell the story as you know it.

A. When I first looked out, the men seemed to be off of the train, I didn't see anybody on the train at all, men were running, and there was a lot of people there, I don't know who, but they were running in all directions, a few brickbats were flying. I seen one man run up the street. I seen several men run up the street, rather, and one of them got hit and knocked down on the other side of the street, which would be probably a block and a half from where I was at.

Q. Is that man that you saw get hit and knocked down

one that was running from the engine?

A. He was running away from it. I don't know whether he got off of it.

Q. How many men were following?

A. Oh, three or four.

Q. And what happened to him after you saw him hit!

A. He was left right there.

Q. Was he lying on the ground?

A. Temporarily. He got up right away.

Q. Now, what else did you see with reference to automobiles? Did you see any damaged automobiles about there?

A. I saw a car go by with a broken window, yes.

Q. How long did this stoning of the train continue! Oh, it was over momentarily. It didn't seem to

last very long.

Q. After they got out of the engine, after the crew got out of the engine, the stoning stopped temporarily, did it?

A. Yes.

Q. And they all started on chasing these men who were on the train, is that correct?

A. There was a lot of men running.

Mr. Knoblock: I don't want to object on the leading. but he is leading.

The Court: Yes. ..

Mr. Heyl: That's all. You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Pearson, you don't know what precipitated this occasion in any way, or what caused it?

Nothing but hearsay, no.

And you are unable to identify or know any of the parties involved there?

I know nobody that was there at all except my own

employees, and they were merely spectators.

You say when this one man fell down he was a block or a block and a half away?

· A. Yes.

You couldn't 'tell for sure whether or not he was hit at that distance?

Nothing except by the actions.

942 He got up right away, you say? Yes.

Mr. Knoblock: That's all.

The Court: Call the next witness.

ROY SILCOX, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

Roy Silcox.

And where do you live, Mr. Silcox?

Q. A. Covington, Kentucky.

Q. And are you temporarily residing here?

A. Yes, sir.

Where are you residing?

300 East Washington Street, East Peoria.

Were you working for the T. P. & W. Railroad in the last week of December, 1941?

A. I started January 5.

Q. January 5?

A. 1942.

Q. Where is the place of your employment?

A. Switch tender down at the P. & P. U. junction.

Q. Where is the P. & P. U. junction?

A. At the west end of the Illinois River at the bridge.

Q. And what, if anything, did you observe at your 943 station on January 6, 1942, when you came to work in the morning? Was it the 6th?

A. The 7th.

Q. The 7th?

A. Yes, sir. I noticed, upon reporting to work, the door had been opened and, after entering it, there was kerosene all over the floor.

Q. All over the floor of what?

A. Over the floor of the shanty.

Q. What condition was it in with reference to being locked?

A. The door had been opened. I know that.

Q. Was the door locked when you got there?

A. No, sir, it was opened.

Q. Was it locked when you left there?

A. Yes, sir.

Q. When did you leave there?

A. I left at 6 o'clock the night before.

Q. What kind of a lock was on it?

A. Just an ordinary lock.

Q. That doesn't tell us a thing. Yale lock or padlock or what? Or ordinary door key?

A. Ordinary door key, yes, sir.

Q. You opened the door and went in the shanty, and

what did you find?

A. I found kerosene had been scattered over the floor, and there was bits of charred paper all over the floor, and matches.

Q. What else?

A. Well, I noticed that several of the reports that had been hanging on the wall were missing.

944 Q. What reports were they?

A. Reports on train movements.

Q. Where were they?

A. Hanging on the wall.

Q. When you left?

A. Yes, sir.

Q. Where did you find them that morning?

I didn't find them.

Did you look for them?

Yes, I looked for them because I had to have them, and I noticed there were bits of charred paper on the floor.

Q. Did those papers relate to the movements of trains the following day?

Yes, sir.

The day you were starting to work is when you found this condition, is that it?

Yes, sir.

What did you find on the floor? Find anything

with reference to stains on the floor?

A. Well, I found— Of course, I noticed this kerosene, noticed there was one burned place in the floor where the floor had evidently tried to burn but couldn't.

Q. How much of the space was burned?

A. I would say from anywhere between four and six inches square.

Q. What did you do after discovering what you have just stated, with reference to notifying the authorities?

A. Well, I notified Mr. Kipling, and he told me-instructed me not to-

Mr. Knoblock: I object to this.

The Court: You notified Kipling? What else? After you notified Kipling, what did you do?

I didn't do anything until he came down. A.

Did you use the shanty, or go in it?

I was already in the shanty, but I didn't touch anything until they arrived down to look at it.

Who arrived? Q.

Mr. Kipling and the Marshal.

United States Marshal? Q.

Yes, sir. A.

What time did they arrive? Q.

Approximately around 9 o'clock. A.

That same morning? Q.

Yes, sir. A.

Same things in the same condition when they arrived as when you went in that morning and found it?

A. Yes, sir. I didn't touch a thing.

You didn't touch anything?

No, sir.

Mr. Heyl: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Silcox, when did you come to Peoria from Covington, Kentuncky?

A. January 5.

Q. And who contacted you to come up here to seek employment?

A. Sir?

Q. And who contacted you to come up here to seek employment?

A. My father.

Q. Your father lives here in Peoria?

946 A. Yes, sir.

Q. What was your work down at Covington, Kentucky?

A. I was working for an oil company.

Q. What is your work over here? I didn't get what work you were doing.

A. Switch tender.

Q. And are you receiving \$10.00 tay over and above your regular rate of pay?

A. No, sir.

Q. You are not?

A. No, sir.

Q. What is your rate of pay?

A. 45½¢ an hour.

Q. And on January 7, 1942, what time did you arrive at this shanty you speak about?

A. Approximately about five minutes after 6 o'clock. Q. And the lock on that door, you say, can be opened

by an ordinary house key?

A. Yes, sir.

Q. And it's not a difficult lock of any kind to open, is that right?

A. Just an ordinary skeleton key will open it.

Q. Will open it?

A. Yes, sir.

Q. And you have absolutely no knowledge of whether or not anybody was in that shanty that night?

A. No; sir.

Q. And if anybody was in there, you don't know who they were?

A. No, sir, I don't.

947 Q. What hours do you work there?

A. From 6 to 6.

What man relieves you at 6 o'clock?

Well, until then I was the only one down there. Now they have two shifts, and my shift now is from 4 P. M. to 2 A. M.

Mr. Knoblock: That's all.

The Court: Call the next witness.

ARTHUR R. SULLIVAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

What is your name?

Arthur R. Sullivan.

Q. A. Where do you live?

100 Rebecca.

Q. A. Peoria, Illinois?

Yes, sir.

Q. What is your age? A. Forty-nine.

What is your business or occupation? Q.

Trainmaster for the Rock Island. A.

How long have you been the trainmaster of the Rock Island?

A. Six years.

You are located here in Peoria, are you? Q.

A. Yes, sir.

Q. Where do you perform the duties of your em-948 ployment?

Well, from Peoria to Burlington, and from Peoria to Rock Island over the "rep" line, and the Peoria and Pekin Terminal.

Q. Peoria and Pekin Terminal is a part of the Rock

Island system?

A. Yes, sir. Do you recall the three cars loaded with bottles from Muncie, Indiana, consigned to Hiram Walker & Sons, Inc., Peoria, and two empty cars, one C. & O. and one S. F. R.

A. Yes, sir.

-that were placed on the C. B. & Q. track by the T. P. & W. on December 31, 1941?

Yes, sir. A.

Q. On the train near Chestnut Street? Do you recall that?

A. Yes, sir.

Q. Will you tell us what you had to do with reference to the movement of those cars following December 31, 1941?

A. We had nothing to do with it. The C. B. & Q. brought the cars up by mistake when they pulled the transfer, and the cars came up to the Rock Island as "no bills" until we found out.

Q. What did you do with them?

A. We kept the cars, and delivered the three bottles to Hiram Walker.

Q. When did you make the delivery?

A. I believe it was on the 1st after we found who they were for. The cars came up the night of the 31st, I think, close to midnight.

Q. Came up where?

A. To the Rock Island yards by the C. B. & Q.

Q. In other words, they were moved from Chestnut 949 Street to the Rock Island yards, is that right?

A. Yes, sir.

Q. When did you make delivery of them?

A. I believe it was sometime in the afternoon of the 1st.

Q. The 1st or the 2nd?

Mr. Knoblock: I object. He answered the 1st.

A. They were delivered when they were ordered in by Hiram Walker. I don't recollect the date, but when they

were ordered in they were placed there.

Q. Now, I will ask you if you remember some additional cars, one of scrap iron, from Keokuk, Iowa, a G. N. car of implements from Syracuse, New York, S. S. W. car, implements from Terre Haute, Indiana, and two empties. Do you recall those cars?

A. I don't recall any cars in particular. I didn't handle

any way bills or switch lists.

Q. Did you receive those cars?

Mr. Knoblock: I object. He said he didn't recall.

Mr. Heyl: I am asking if he received those cars I have mentioned.

The Court: He may answer.

A. I know we had a car of scrap iron we delivered from the T. P. & W., and also some implements, but I don't recollect any cars, car numbers.

Q. Did you have any difficulty making delivery of those

cars to the T. P. & W.1

A. Do you know what date that was we delivered them? Q. January 2, 1942.

A. No, we had no difficulty.

Q. Did you have any difficulty any time before Janu-

950 ary 4 or 3, 1942 while this strike was on?

A. I believe it was on the 2nd that we started over with a delivery, and were stopped by one man with a picket sign, and returned to the yards with the cars. We were notified by our officials then to deliver them, and we went over later on that afternoon.

Q. How much of a delay was there on account of that?

A. Well, it must have been three or four hours. We went over there around 6 o'clock that night, and we were stopped around 2:30 that afternoon, I believe.

Q. Where were you stopped?

A. Just as we go on the T. P. & W. junction there at State Street.

Q. Did you have any conversation with any of the

pickets?

A. Well, there was a man there. The spokesman— He had been walking in front of the engine, and the switchman was talking to him, and asked him, when I come up, what the trouble was, and the picket said he had instruction not to go by the picket line, and I waited until I went back and had instructions to deliver them.

Q. Did you talk with this picket?

A. I don't recollect whether I did or not. I don't believe I have talked with any of the pickets.

Q. Was this with your own switchman?

A. Yes, sir.

Mr. Kneblock: I object to that.

The Court: Oh, I think he may answer.

Q. Was that in the presence of this picket?
A. He was standing there at the crossing.

Q. On January 3, 1942, about 10:40 A. M. did you have a conversation with one of the officials or officers of the 951 C. B. & Q. with reference to their delivery, or attempted delivery, of the seventeen cars on January 2, 1942!

Mr. Knoblock: I object to any conversation.

The Court: He asked if he had a conversation.

He can testify to that.

. Did you have such a conversation?

A. I believe I have. I have talked to them at different times over the telephone.

Q. Do you understand what I asked you? I asked if you had a conversation at 10:40 A. M. January 2, 1942?

A. Yes, sir, I believe I had.

Q. Who is your general yardmaster?

A. Joe Kelly.

Q. And at the time I have indicated, were you advised as to what had happened to the C. B. & Q. cars on January 2, 1942?

Mr. Knoblock: I object to this.

Mr. Heyl: I am not asking for the conversation. The Court: I think that objection will be sustained.

Mr. Heyl: All right.

Q. Did you receive some information, without stating what it was, from the C. B. & Q. with reference to delivery of cars?

A. Yes, sir.

Q. Did you deliver any cars following that information! Receipt of that information, prior to the time this restraining order was issued in this case the afternoon of January 3, 1942!

A. Was that a Sunday?

Q. No, that was Saturday.

A. No.

Q. You didn't make any more deliveries?

952 A. No, we made the delivery on a Sunday, I believe. Q. That would be the 4th?

A. 4th.

Q. Can you tell the court what caused the delay in the delivery of these cars?

Mr. Knoblock: I object to that.

The Court: I think he may answer if anything caused the delay.

You may answer.

A. Why, I don't believe we had anything important to deliver. I think I just called him to find out—if he had had any trouble making his delivery. I believe we only had the car of scrap and the two empties.

Q. They were not delivered, were they?

A. No, sir.

Q. Is it your practice to hold up deliveries when you have only one carf

Mr. Knoblock: I object to that.

The Court: Sustained.

Q. What is your practice with reference to delivery of freight on this road?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Now, did you have any conversation with any of your men with reference to delivering cars through these picket lines to the T. P. & W., without stating what it was?

A. I tried to make the deliveries as we previously had

done.

Did you understand my question?

(Question read by reporter.)

953 Q. I mean your switchmen or employees engaged in moving cars.

A. Read that again.

(Question reread by reporter.)

A. Yes, sir.

Q. And when did you have these conversations?

A. Oh, at different times through the yard.

Q. I will ask you if it is not a fact that you had for delivery to the T. P. & W., prior to January 3, 1942, and prior to the time the restraining order was issued, the following cars:

M. W. X., implements, Peoria, Ill., destination Terre

Haute, Ind:

S. A. L. car, empty, Peoria; Ill.

P. A. car, scrap iron, Chicago, destination Keokuk, Iowa.

2 C. & O. cars, empty, Peoria, Ill.

G. N. car, implements, destination Syracuse, N. Y.

S. S. W., implements, Peoria, Ill., destination Terre Haute, Ind.

C. B. & Q., feed, St. Joe, Mo., original destination Gridley.

2 C. & O. cars, empty cars, Peoria.

1 Rock Island car, feed, destination Mt. Holly, N. J.

Isn't it a fact you had those cars at that time, and hadn't delivered them?

Mr. Knoblock: I object. This is his witness.

He is trying to impeach his own witness, apparently.

The Court: I think he may answer.

A. I recollect some of those cars, but I couldn't swear to all of them.

Q. Isn't it a fact you didn't give the order to deliver those cars by your railroad, Rock Island, to the T. P. & W.

until 5:55 P. M., January 3, 4942, after you were ad-954 vised a restraining order had been issued, and there would be no violence?

Mr. Knoblock: I object. The Court:/Sustained. Q. When did you deliver them?
Mr. Knoblock: I object to that.

The Court: He may answer.

A. 6:05 P. M., January 4, I believe, is the delivery time.

Q. How long had you had these cars?

Mr. Knoblock: I object as having been asked and answered.

The Court: Yes, objection sustained. Mr. Knoblock: No cross-examination.

955 OLAF HANSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. What is your name?

A. Olaf Hanson.

Q. Where do you live, Mr. Hanson?

A. I live at 505 Blaine Street, and I got my business at 3117 South Adams.

Q. Where is that with reference to Western Avenue?

A. Well, it's south of Western Avenue.

Q. About how far!

A. Well, it's about the middle of the block.

Q. About the middle of the first block?

A. About the middle of the first block, yes.

Q. You were subpoenaed in this case, were you not?

A. Yes, sir.

Q. Were you at your place of business on January 2 in the forenoon?

A. Yes, sir.

Q. What is your business?

A. Shoe repairing.

Q. And during the morning of January 2 I will ask you if you observed anyone out in front of your place, and giving instructions to call the police?

A. Yes, sir.

Q. Do you know about what time in the morning that was?

A. Well, I don't know exactly. It was in the early part of the forenoon.

956 Q. Where was this party that was asking that the police be called, with reference to your place of business?

A. Well, pretty near exactly in front of my place.

Q. Did you observe the party that was out there and asking that the police be called? Did you see him?

A. I saw a man, yes.

Q. Where was he with reference to the front of an automobile?

A. He was right in front of an automobile.

2. What, if anything, did he have in his hand?

A. Well, he had something in his hand that looked like a shotgun.

Q. Tell the court how he was holding that gun. Was he pointing it at anybody?

A. No, sir, not at that time.

Q. Did you see him point at anyone at any time that day?

A. No, sir.

Q. How close was he standing to the front of the automobile?

A. Well, I imagine about three or two feet, two or three feet.

Q. Did he or not remain there until the police came?

A. Well, he stood there for a while. I didn't see when the police came.

Q. You didn't see when the police came?

A. No.

Q. Do you know how soon after the call for the police was made that the police came?

A. Well, it wasn't very long.

Q. And after the police came, what occurred with reference to this man and the men that were in the automobile?

A. Well, I couldn't say. I didn't see that. Q. Do you know who called the police?

957 A. No, sir.

Q. When was the first that you saw this man standing in front of the automobile?

A. Well, the first I noticed was when I heard them ask for somebody to call the police. That is the first time.

Q. That is the first you noticed?

A. First I noticed, yes.

Q. Where was he standing when you heard him call for the police?

A. He was standing right in front of the automobile.

Q. Were you out on the street, or did you see that through the window of your store?

A. I saw it through the window.

Q. Did you hear what was said with reference to the calling of the police?

A. No.

- Q. How did you know he was calling for the police?
 A. I didn't know. I heard him ask somebody, that's all I know.
 - Q. And you learned that the police had been called?

A. Yes.

Q. Did you or not observe how many men were in the car that was standing there with this man in front?

A. Well, I saw one sitting at the wheel.

Q. Did you observe whether there was any other man in the car?

A. No.

- Q. You don't know whether there was or not?
- A. I don't know if there was more than one, no.

Q. Was there another car standing there?

A. Beside this car that was— Q. That the man was in.

- 958 A. Yes, there was two cars parked right in the middle of the street.
 - Q. Parked right in the middle of the street!

A. Yes.

- Q. Was there anybody in the car that was in the middle of the street?
- A. In the cars there was one man. I saw one man sitting.

Q. You saw one man sitting in a car?

A. Yes.

Q. How long did you observe this situation there?

A. Well, it wasn't very long. I was busy, and I went right back to my work.

Q. Can you give me any idea as to how long it was?

A. Oh, probably five minutes.

Q. And you paid no attention when the police came as to what became of the people?

A. No, I did not.

Q. You kept on with your work?

A. I kept on with my work, yes.

Q. You didn't know any of these parties, did you?

A. No.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. What hour of the morning did this situation occur, Mr. Hanson? About what hour would you say?

A. I couldn't say what hour exactly. It was in the

early part of the forenoon.

Q. Say 7 o'clock?

A. No, it wasn't that early. I don't get-to work be-959 fore 8, and it was probably between 9 and 10, as far as I can remember.

Q. Who else was in your store at that time?

A. There was a lady in the store at the time.

Q. Do you know her name?

A. No, I don't.

Q. What first brought your attention to this situation?

A. When I heard a fellow ask for the police, for somebody to call the police.

Q. And that man was not the man holding the gun, was

it?

A. I think it was him, yes.

Q. Did he call to you?

A. No, he didn't call to me.

Q. Could you hear the conversation that went on out in the street?

A. No, sir.

Q. And what was said out there you don't know?

A. I don't.

Q. During all the time that you watched this incident, the man standing in front of the automobile had the shot-gun in his hand?

A. He had something in his hand that looked like a shot-

gun.

Q. What side of the street is your place of business? The river side?

A. No, the north side.

Q. And was this automobile north or south of your place? Was it toward town from your place, or away from town?

A. The two automobiles were standing right in the street car tracks:

Q. Were they closer to the business part of Peoria, or were they away from the business part of Peoria with respect to your place?

A. So far as I can remember, they were about in the

middle of the street.

960 Q. I know, but, as you looked at them, were they to your right or your left?

A. Well, I don't know what to say about that. It was

right in front of my store.

Q. They were straight ahead, were they?

A. Right ahead, yes.

Q. Did you see a street car come up behind one automobile parked in the street?

A. I think that was going down Adams Street.

Q. You didn't see one coming toward the City of Peoria!

A. No.

Q. You don't know how long they stood there that morning, do you?

A. No, I don't.

Q. And you didn't hear what the man holding the shotgun said to the man in the car, do you?

A. No.

Q. You didn't observe it close enough to see whether there was one or two men in the automobile, did you?

A. No.

Q. And all the time that you watched this incident, this man with the shotgun was pointing it at the man in the car?

A. No, he was not.

Q. What was he doing with it?

A. He was holding it in his hand, not pointing it at anybody.

Q. He wasn't pointing it at anybody?

A. Not at that time.

Q. You watched it for about five minutes?

A. Yes, sir.

961 Redirect Examination by Mr. Elliott.

Q. How was he holding the gun?

A. Standing like this (demonstrating).

Q. With the barrel of the gun toward the ground?
A. That is the way he was standing when I saw him.

Q. Your place is on the bluff side of the street?

Yes.

Q. Where was this automobile and the man that was standing in front of it? Was that on the bluff side of the street, or river side?

A. The man in the car was on the river side of the

street.

Q. And this man was standing in front of the car?

A. Yes.

Q. Take this ruler, and indicate how he was holding the gun.

Mr. Knoblock: I object.

The Court: I think he may do it.

A. (Witness complies) Like this.

Q. With the barrel pointing toward the ground?

A. Yes.

Mr. Elliott: That's all. Mr. Knoblock: That is all.

962 R. E. GREEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. What is your name?

A. R. E. Green.

Q. Where do you live?

A. Peoria.

Q. And what is your business?

A. Electrician, T. P. & W.

Q. For what company? A. T. P. & W. Railroad.

- Q. How long have you been an electrician for the T. P. & W.!
 - A. Twelve years:
 - Q. Continuously?

A. That's right.

Q. Where is your place of work?

A. East Peoria shops and roundhouse.

Q. Were you on duty on the 30th of December?

A. I was, yes.

- Q. That was Tuesday?
 A. I believe Tuesday.
- Q. Do you know the location of the lane that leads from hard road 24 down toward the shops?

A. Yes, I do.

Q. What, if anything, did_you have to do with the installation of an electric light at the entrance to that lane leading from Route 24 toward the shop?

963 A. When the installation was started, I was not available and the signal department of the railroad started the job, and I later arrived there and helped complete it.

Q. Tell us just where that light was placed, and how it

was located .

- A. I would say the lane is approximately twenty feet south of the edge of the concrete highway in the lane, on the east side of the lane, mounted on a pole about twenty feet in the air.
 - Q. And what is the candle power of that light?
 A. Light any more is not rated in candle power.

Q. Tell us how it is rated, then.

A. In our industry we use foot candles as a rating of illumination.

Q. Tell us the rating of this light.

A. When it was originally put up on that date, the signalman put a thousand watt lamp in, and I understand it was changed about—

Mr. Knoblock: I object to what he understands. The Court: Do you know whether it was changed.

A. I have the word of the signal supervisor.

.Q. Did you observe it after it was placed there?

A. I did not observe it after dark.

Q. Who was the signalman that advised you with reference to any change?

A. I. H. Hultgren.

Q. What sort of a shade or cover was on that light?

A. It's an elliptical-shaped reflector, commonly known as a floodlight.

Q. How was that light placed with reference to throw-

ing the glare onto the pavement?

A. It was Mr. Hultgren's intention to place the light—Mr. Knoblock: I object to this.

964 The Court: State how it was placed.

Q. State how it was placed, if you know.

A. I just have his word. I do not know.

Q. And you have made no test of it at night?

A. I made a test on January 10.

Q. Was that the same light that was there previously!

A. No, there is a three hundred watt light, and there was on January 10 a three hundred watt light.

Q. What was it on December 30?

Mr. Knoblock: I object as having been asked and answered.

The Court: If he knows.

A. I just have Mr. Hultgren's word.

Q. Did you observe the glow of the light that you tested on January 10 as to the illumination it afforded?

A. I did.

Mr. Knoblock: I object.

The Court: Is there any serious question as to whether

there was a light?

Mr. Heyl: There has been some question about what the extent of illumination was. This man doesn't seem to know what the illumination was.

Mr. Elliott: That's all. Mr. Knoblock: No cross!

965 GERALD R. KRONBLAD, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. . What is your name?

A. Gerald R. Kronblad.

Q. Where do you live?

A. 103 High Street, Peoria. Q. What is your business?

A. Chief clerk to the superintendent, T. P. & W. Railroad.

Q. How long have you been such chief clerk?

A. For five and a half years.

Q. What, if anything, do you have to do as a part of your duties with reference to keeping the record of switch keys?

A. The switch keys are turned in to our office, and checked off before a man is given his final pay check.

Q. To whom are switch keys furnished?

A. They are furnished to engineers, firemen, conductors, brakemen; all firemen are not furnished some switch keys, but some are, and, in addition, there are section men and maintenance men who are also furnished keys.

Q. Do you keep a record of those keys that are given

out and turned in?

A. Yes, sir, we have a record in our office.

Q. And that is kept under your general supervision, is it?

A. Yes, sir.

Q. Do you know the men that went out on strike on the evening of December 28?

966 A. Do I know them?

Q. Yes.

A. Yes, sir, I know most of them.

Q. I will ask you whether or not—how many went out on strike.

Mr. Knoblock: I object, unless he knows.

Q. If you know.

A. There were about ninety-three notices served, I believe.

Q. I will ask you whether or not, prior to today, any of the keys held by those men who went out on strike have been turned in?

A. A check which I made up until noon of yesterday revealed that fifteen men had turned in their company property, that is, fifteen men of the men that went out.

Q. Had any of the others turned in their keys?

A. What do you mean?

Q. The other men that went out on strike, aside from the fifteen.

A. No, sir.

Q. The difference, then, between ninety-three and fifteen still have keys 1.

A, Yes, sir.

Q. And that was your check up until noon yesterday!

A. Until noon yesterday.

Q. Of those fifteen that were turned in, when were they turned in?

A. They were turned in—That check was made between December 28 and moon vesterday.

Q. And it was sometime between those dates that the fifteen were turned in?

A. Yes, sir. The first keys were turned in on December 31.

Q. Have you made a request of any who have refused to turn in their keys?

967 A. All men were asked to turn in their keys when they served a notice that their employment had ceased.

Q. When was that notice?

A. That notice was dated December 31, 1941.

Q. Was that notice sent to the ninety-three men who had gone on strike?

A. Yes, sir, sent by registered mail.

Q. Were the registered receipts returned?

. To date all but two have been returned.

Mr. Elliott: That's all.

The Court: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Mr. Kronblad, I will ask you if you know whether or not these men you referred to consider themselves as discharged?

A. I am afraid I couldn't answer that.

Q. I didn't think you could! And you don't know whether or not some of the officials of the T. P. & W. are contacting some of these men, requesting them to come back to work on Mr. McNear's terms, do you!

A. No, sir, I couldn't answer that.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

968 WILLIAM J. HUNTER, recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. State your name.

A. William J. Hunter.

Q. Are you the same William J. Hunter on the stand once before?

A. Yes, sir.

Q. What is your occupation?

A. Trainmaster's clerk.

Q. Were you on duty on December 29 at the time of the occurrence up at the head of the lane?

A. Yes, sir.

Q. Was that occurrence reported to you with Zeno Merrill? Was that on the 29th or 30th?

A. No, sir. That was on the night of the 30th.

Q. Were you on duty at that time?

A. Yes, sir.

Q. And what, if anything, did you have to do with the calling of the police?

A. Nothing.

Q. Do you recall the occurrence when the train was stopped east of the Illinois River bridge?

A. Yes, sir.

Q. Did you have anything to do with calling the police at that time?

A. I called the East Peoria police, and they told me there had been a car already sent down.

Q. Somebody else had called previous to that?

969 A. Yes, sir.

Q. I will ask you if, prior to the calling of the strike, you had any conversation with Verd Kirk with reference to what might occur if a strike was called?

Mr. Knoblock: I object to what might have occurred. The Court: I think he can state the conversation.

A. Yes, sir.

Q. About when did you have that conversation, Mr. Hunter!

A. Well, it was in the early part of December; December 5.

Q. And where did it occur?

A. On the yard engine, East Peoria yard.

Q. Tell us what Mr. Kirk said at that time.

Mr. Knoblock: I object to that as too remote to the issues in this case.

The Court: No. Tell us what you both said.

A. I got on the vard engine out there the evening of December 5, and rode up and down the lead a while. Mr. Kirk asked me how things were going. I told him as far as I know everything was going all right, and he asked me, or said to me, then that he was afraid if the train and engine employees went on a strike there might be trouble.

Q. Did you say anything in reply to that?

A. No, sir.

Q. Was that on the engine that was being operated by Mr. Kirk?

A. Yes, sir.

Q. Did you have any conversation with Smith Engel-

A. Yes, sir.

Q. When did you have a conversation with him?

970 A. At that same time on the same engine.
O. He was the fireman at that time, was he?
A. Yes, sir.

Q. What did Engelhart say, if anything?

A. Mr. Engelhart told me that he had heard, if they went on a strike,—

Mr. Knoblock: I object to this.

The Court: I don't see what you are trying to prove. The conversation with a man before they went on a strike, said there might be trouble, anybody would say that.

Mr. Heyl: There is something more to this statement.

The Court: Let's see what the next one was.

A. Mr. Engelhart told me he had heard, if they went on a strike and attempted to operate any trains, there would be none get as far west as the Illinois River bridge or as far east as Washington Street.

Mr. Knoblock: I object.

The Court: Is that what he heard?

A. Yes.

The Court: Sustained.

Mr. Heyl: It is stated by a man a member of the union, and would show—

The Court: It doesn't show me a thing.

Mr. Knoblock: -who might have told it to him?

A thousand men might have told it to him.

The Court: Complete your record, but I will sustain the objection.

2. Did he tell you who had said that to him?

A. No, sir.

Q. And you do not know who made the statement to Engelhart?

Mr. Knoblock: I object as having been asked and answered.

The Court: Sustained.

Q. Did you or not report the conversation that you had with Kirk and Engelhart to the railroad officials?

A, Yes, sir.

Q. When?

A. That same evening.

Q. To what official did you report it?

A. Mr. Best.

Q. He was the superintendent?

A. Yes, sir.

Mr. Elliott: That's all.

Mr. Knoblock: No cross-examination.

972 JOHN WOLF, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. John Wolf.

Q. Where do you live?

A. South Adams.

Q. What number on South Adams?

A. 3113.

Q. And are you in business there?

A. Yes, sir.

Q. You live at your place of business?

A. I don't live at my place of business.

Q. What is the number of your place of business?

A, I really couldn't tell you the number of the place, where I moved to.

Q. It is in what block? What block on South Adams Street?

A. It's at the furniture store, and I couldn't tell you exactly in what block.

Q. Where is it with reference to Washington Street?

A: With reference to Washington it would be, I judge, around a half a block back of Washington where it comes into Adams.

Q: And where Krause Avenue-

Mr. Knoblock: I don't follow that.

The Court: You know how to find it?

A. Oh, ves. I just can't think of the number.
The Court: Go ahead!

973 Q. Is your number 3113?

A. 3113 is where my place of business is.

Q. Where you live?

A. 3113 is where my place of business is.

The Court: Is that where your place of business is now! 3113 what!

A. South Adams.

Q. 3113 South Adams.

A. South Adams.

Q. Where do you live with reference to that?

Mr. Knoblock: I object. He says he doesn't know.

The Court: I think he may answer. Where do you live? Is it material?

Mr. Heyl: I don't think it is.

Q. Were you at your place of business on Friday, January 2, 1942?

A. Yes, sir.

Q. And did you observe anything unusual in the street

immediately in front of your place of business?

A. Well, there was a car which had drove up there, a car that had drove up in front, and another car pulled to the side of it, and a fellow that was in one car got out in front of the other one with a shotgun under his arm, or rifle, or whatever it was.

Q. About what time of day was that, if you know?

A. That was somewhere around 9 o'clock.

Q. Now, what attracted your attention to the street?

A. The man that got out of the one car with the gun, he hollered to somebody to call the police.

Q. Where were you at that time?

974 A. Standing at my place of business.

Q. Did you see him then from that time on, this man that asked the men to call the police?

A. No, I haven't.

Q. Did you see him from that time on until the police arrived?

A. Until the police arrived, yes.

Q. What did you see him do?

A. He just stood out in front and kept wanting somebody to go get the police.

Q. Did you see how he held his gun?

A. He held it under his arm.

Q. Will you take this ruler and show the court how you saw him hold that gun?

A. He had it under his arm standing there, and once in a while he would reach up and rest his hand on the gun.

Q. Did you at any time see him point that gun at the men in the car?

A. No, I didn't.

Q. And did the man remain there until the police arrived?

A. Yes, sir.

Q. Did you see how many men there were in that car?

A. There were two men,

Q. Were they taken out of the car, or how were they taken from that place?

A. When the police arrived, they went up and had these fellows to get out, the police did, had them get out of the car, and then they left them get in the car, and one of the officers rode up with them. It was Mr. Kuntz, I believe.

975 Q. One of the city police?

A. One of the city police, yes.

Q. Did you hear this man you have described as having the gun make any threats during the period that he stood there?

A. Not that I heard.

Q. Can you identify the man that had the gun?

A. I believe I can.

The Court: Is there any question about that, gentlemen?

Mr. Heyl: I don't know.

Q. Was Mr. Kipling the man you met here the man—Was the man you met out in the hall when I talked with you this morning the man you saw at the car?

A. Yes.

The Court: These men were arrested?

Mr. Heyl: Yes.

The Court: What is the argument about? I don't see anything, unless there is some theory he pointed a gun. That would be a matter of rebuttal.

Mr. Heyl: Maybe it would.

The Court: We are saving time by hearing it now.

Mr. Knoblock: Is that all, Mr. Heyl?

Cross-Examination by Mr. Knoblock.

Q. Mr. Wolf, what is your business down there?

A. Lunch room.

Q. How long have you been in that lunch room business there?

976 A. I have been there eight months.

Q. On this particular morning were you busy with some of your customers?

A. Well, off and on.

Q. And you didn't watch this man out there with the gun in his hand, isn't that right?

A. Not all times, but most of the time.

Q. How long have you been talking to Mr. Heyl about this out in the hall?

A. Mr. Heyl here?

Q. Yes.

A. That is the only man I have talked to.

Q. No one else knew you knew anything about this, is that right?

A. No.

Q. How did Mr. Heyl happen to find you in the hall this morning?

A. I was called to come down here.

Q. What did Mr. Heyl say to you in the hall?

A. Didn't say anything.

Q. Just stood out there and visited with you?

A. Yes.

Q. And you have been upstairs in the witness room?

A. How?

Q. You have been up in the witness room this morning?

A. How long? I just got in.

Q. Didn't you come down and go through one of the doors out in the hall, and stand there with Mr. Heyl for about just—ten minutes—just now?

A. Standing talking.

Q. You just visited with him that ten minutes?

Mr. Heyl: That isn't what he said. Ask him!

Q. Weren't you out there with him ten minutes, or about that time?

A. I don't believe I were.

Q. Wasn't Mr. Heyl there's

A. Yes.

Q. Wasn't Mr. Kipling there, too?

A. I couldn't say how long he was there.

Q. He was there several minutes?

A. Just a few minutes, and told me to wait.

Q. Wasn't Mr. Kipling there, too?

A. That's the police, in other words? Q. No. Wasn't Mr. Kipling there?

A. The officer.

Q. Don't you know who Kipling is?

A. The heavy-set fellow.

Q. Did you see him on the day of January 2, 1942?

A. Yes.

Q. Was he out there just now with you and Hevl?

A. He wasn't talking to me. Q. He was there, wasn't he?

A. He was there.

Q. You and Heyl were going over your testimony you were going to give in this court room right now?

A. No.

Q. You didn't say anything to him about your testimony you were going to give in here, is that right?

A. No.

The Court: Anything else?
Mr. Knoblock: That's all.

978 Redirect-Examination by Mr. Heyl.

Q. Were you subpoenaed here this morning?

A. Yes, sir.

Q. When I talked to you out in the hall, I asked you to tell me what you saw?

Mr. Knoblock: I object to this leading.

The Court: He may answer.

A. That's right.

Q. And you told me what you have testified to here!

A. Yes.

Q. And that is all I did ask you?

A. That is all I did say, yes, what I saw.

Q. You weren't up in the witness room at all?

A. No.

Recross Examination by Mr. Knoblock.

Q. Do you know where the witness room is?

A. I couldn't tell you that because this is the first time I have been in here.

Q. How did Mr. Heyl know what you were going to say when you came up here?

Mr. Heyl: I object.

Q. How did Mr. Heyl know you knew anything about it?
Mr. Heyl: I want to object because there would have
to be mental telepathy to the witness.

The Court: And you don't think you have it?

Mr. Heyl: No.

The Court: What he wants to know is: Did you tell 979 anybody you had seen this down at your place of business or some place else? Did anybody ever try to get you to talk?

A. They tried to get me to talk.

The Court: Who was that?

A. I don't know who they were.

Mr. Hevl: That's all.

The Court: I think we will take a recess.

(Recess.)

ELMER L. SLATER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. What is your name?

A. Elmer L. Slater.

Q. And what is your business?

A. I am chief clerk in the traffic department.
Q. Of the Toledo, Peoria & Western Railroad?

A. Yes, sir.

Q. How long have you been such chief clerk.

A. Nine years.

Q. Are you familiar with the extent of the T. P. & W. road? Between what points it runs on the east and on the west?

A. Yes, sir. .

- Q. Tell us.

 A. It runs from Effner on the east to Keokuk, Iowa, on the west.
- 980 Q. And is there also a main line from LaHarpe to Lomax?

A. There is.

Q. And that connects with the Santa Fe at Lomax?

A. Yes, sir.

Q. In your department, do you, or under your supervision is there kept, a record of cars that are handled by the road?

A. Yes, sir.

Q. And is that under your supervision?

A. Yes, sir.

Q. I will ask you if you have caused to be prepared, under your direction, a statement of car load shipments of war materials and supplies, including shipments of food stuffs for national relief shipped by or consigned to the United States government and associated nations, handled by the T. P. & W. during the year 1941?

A. Yes, I have.

Q. I will have it marked "Plaintiff's Exhibit 20", and state whether or not that is such statement that has been prepared by you and under your direction.

A. It is.

Q. Does that show the car number and the initials and the contents?

A. Yes.

Q. What does it show with reference to whether the cars moved were state or interstate?

A. It does.

Q. How does it define whether it is state or interstate!

A. The letter "I" designates interstate, the letter "S" state traffic.

Q. And that is a true and correct statement of cars 981 handled during those months?

A. Yes, sir.

Q. Is it made up by months?

A. Yes, sir.

Q. On the first sheet is there a recapitulation?

A. Yes.

Q. What is the total number of cars shown handled!

A. Three thousand nine hundred and thirty-two cars.

Q. And in the detail of the statement, it shows the commodity handled, does it?

A. Yes.

Mr. Elliott: I offer in evidence PLAINTIFF'S EX-HIBIT NUMBER 20.

I might ask one or two more questions.

The Court: All right:

Q. Mr. Slater, I will ask you whether or not you are familiar with the general traffic that is handled by the T. P. & W., and has been during the past years?

A. Yes, sir.

Q. You may state whether the traffic is largely interstate or state.

A. The majority is interstate.

Q. The T. P. & W. handles traffic, what they call "overhead traffic", from roads on the west to roads on the east of Illinois to roads on the west, doesn't it?

A. Yes.

Q. And the larger portion of its traffic is what is called "overhead traffic" or "interstate traffic"?

82 A. Yes, sir.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Slater, when was it that the T. P. & W. put an embargo on those materials?

A. Which materials?

d

Q. These war materials.

Mr. Elliott: I object to that. It is not cross examination. The Court! He may answer if he knows.

A. An embargo on all traffic?

Q. You have an embargo down there now, haven't you?

A. To some extent.

Q. And on what materials?

A. On overhead traffic.

Q. And what else?

A. Perishables and livestock.

Q. Anything else?

A. No, sir.

Q. When did that embargo go on?

A. The original embargo on December 6, 1941.

Q. And what did that include?

A. The original embargo included all freight.

Q. Then what modification has been made since that

A. It has been amended since then to permit the handling of freight from or to points on the T. P. & W. Railread, excepting livestock and perishables.

Q. When was that done?

983 A. I don't recall the exact date.

2. Is that embargo in effect at the present time?

A. It. is.

Q: And the original embargo on December 6 was put into force by the T. P. & W. before any strike was called, isn't that right?

A. I can't answer that.

Q. You know the strike wasn't called until December 28, 1941, don't you?

Mr. Elliott: The original strike was called before that.

Q. The strike didn't actually take force until December 28, 1941, did it?

A. It did not.

Q. And the original strike wasn't even called on December 9, 1941, was it?

A. I don't know.

Q. Is some saving of time made on materials, shipped

through this part of the country by going over your line, rather than sending it through the Chicago yards?

A. I can't answer that.

Q. On east and west traffic?

A. Sir?

Q: On east and west traffic?

A. I can't answer that.

Q. Doesn't this embargo that is now imposed upon that road also include national defense materials?

A. As far as overhead traffic is concerned.

Mr. Knoblock: That's all.

984 Redirect Examination by Mr. Elliott.

Q. Do you know the reason the embargo was put on? Mr. Knoblock: I object to that.

The Court: He may answer if he knows.

A. Yes.

Q. Tell us.

A. The embargo was put on from having shippers and their cars delayed.

Q. By reason of the strike?

A. By reason originally of a proposed or threatened strike.

Q. And after the original strike that was called for December 9 was postponed, the embargos were modified, were they not?

A. Yes, sir.

Mr. Knoblock: I object to that.

Q. And what is the reason that the embargos have still been kept on since the strike?

Mr. Knoblock: I object as a conclusion of this witness.

The Court: He may answer.

A. May I hear the question again?

Q. What is the reason the embargos are still on? A. To still prevent any delay to through traffic.

Q. And the through traffic or overhead traffic which you have heretofore mentioned is now being sent over other roads to save delay on account of the strike on the T. F. & W., isn't it?

A. To the best of my knowledge.

Q. And that is your understanding as to why the embargo is still kept on?

A. Yes, sir.

985 Q. To prevent delays to shipments and damage to shipments?

A. Yes.

Mr. Knoblock: I object.
The Court: Sustained.
Mr. Elliott: That's all.

Recross Examination by Mr. Knoblock.

Q. That embargo was still on even since the restraining order issued by this court on January 3, 1942, isn't that right?

A. As far as overhead traffic is concerned.

Mr. Knoblock: That's all.

Mr. Elliott: That's all.

986 CHARLES GENDA, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl,

Q. What is your name?

A. Charles Genda.

Q. Where do you live?

A. Route 3, Peoria.

Q. I ask you to look at the photograph which was identified vesterday and marked "Plaintiff's Exhibit 4", and tell the court if your house appears on that photograph.

A. It does.

Q. Where is it?

A. Right there (pointing.)

Q. It appears at the upper right hand corner of this photograph, does it not?

A. Yes, sir.

Q. Beyond the tavern?

A. Yes, sir.

Q. Do you own the tavern that is shown in that photograph,—

A. I do.

Q. -Plaintiff's Exhibit 4!

A. Yes, sir.



And the same tavern that is shown in Plaintiff's Exhibit 5!

Yes, sir. A.

Q. Were you at the tavern or on the premises or near the premises on the morning of January 2, 1942?

I couldn't give any reason to say that that par-

ticular day-

Q. Was it the day there was some trouble with the train there?

I was home. A.

Was that the day?

A. Yes, sir.

Before this occurred, were you on the railroad Q. track?

A. Yes, sir.

Q. Tell what you were doing, and where you were going, and what happened.

A. I was going down to visit a friend of mine.

Q. Where is that friend, so we will know?

It's—Well, it lies beyond the railroad tracks. There are three tracks there, and his place is across the third track.

Q. Now, is one of the tracks shown on Exhibit 6?

Here is the Northwestern grade (indicating).

You are pointing in the upper right hand corner of that Exhibit 6. That is the Northwestern, you say?

A. Yes, sir. It lies beyond that.

And in going to your friend's place would you cross the track that's shown in Plaintiff's Exhibit 7?

That is the Rock Island. Yes, sir.

That is the T. P. & W.?

Rock Island:

Mr. Knoblock: I object.

The Court: Answer whether he crosses that track

Shown in the picture, whosever railroad it is.

I crossed that, yes. A.

Now, the same place where you crossed is shown in Plaintiff's Exhibits 4 and 5, is that true?

A. No, sir.

988 Did yea cross the railroad there?

Just beyond that.

Which way? That would be west?

To the right; to the southwest.

As you were crossing the track, what occurred?

A. I had just walked a short distance when a man approached me and, thinking it was a railroad official, I stopped and he told me I had better get off the track, which I did.

Q. Where did you go?

A. I went into the tavern.

Q. Did you aftewards learn who that man was!

A. No, sir, I did not.

Q. All right!—Then did the man go back to the tavern with you?

A. No, he did not.

Mr. Knoblock: I object to the leading of this witness.

Q. Where did you go? You say you went to the tavern. Where did you go?

A. I went nearer the back end, standing by the stove.

Q. Did you observe any person come there after you got back to the tavern?

A. Well, there was several customers in there before, and there was another one came in afterward, I believe, before the trouble occurred.

Q. Did somebdy buy a drink there?

A. Yes, sir.

Q. Who was it?

A. I don't know the man.

Q. What was said there with reference to this train? Mr. Knoblock: I object, unless it is shown by whom.

989 The Court: Do you know who the man was?

A. No, sir, I did not.

The Court: Did you have a conversation with somebody with reference to the train?

A. Just what the man told me is all. The Court: I think he may answer.

Q. What was said?

A. He just told me I had better keep off of the rightof-way for the time being, something might happen.

The Court: He answered that.

Q. Inside the tavern, what was said there about the train coming?

A. There was nothing in particular mentioned.

Q. What was said with reference to the men waiting for the train?

Mr. Knoblock: I object to that. He said nothing particular-

The Court: Whom did he say it to?

Mr. Heyl: He said it to him.

The Court: Was there some man in the tavern talking to you?

A. There was a number of them, and we were carrying

on a conversation.

Q. Tell me the conversation as you told me out in the hall.

Mr. Knoblock: I object to this.

The Court: Yes, state if you had any conversation in the tayern.

A. As I mentioned before, the boys were having drinks (I think they just got their checks cashed), and this fellow, which evidently is the man you have in mind, volunteered to buy a drink.

Mr. Knoblock: I object to this.

990 : The Court: Yes. What was said?

A. Nothing in particular.

Q. What was said, if anything, about the train being about due?

Mr. Knoblock: I object. He said nothing particular was said.

The Court: I think he can answer if anything was said.

A. Inside the tavern; nothing.

Q. Outside the tavern did you hear anything about it!

Mr. Knoblock: I object as having been gone over:

The Court: Did you have any other conversation with him?

A. I did not.

Q. Did you hear any conversation while you were sitting there?

A. I wasn't paying any attention.

Mr. Knoblock: I object.

Q. Isn't it a fact you stated to me out in the hall, when I asked you what you knew about this, that you heard this man say that the men were waiting out there for the train to come, and that the train came in a very few minutes after that? Isn't that a fact?

Mr. Knoblock: I object.

The Court: Yes, sustained as to what he told you.

Mr. Heyl: Under the authorities I have the right to call his attention to the statements he made to me. He is an adverse witness.

The Court: Objection sustained.

Q. Isn't it a fact you told me after you heard this statement made in the tavern, the train arrived immediately?

91 Mr. Knoblock: I object, "Isn't it a fact?"

The Court: Objection sustained as to what he told you.

Q. Did the train come shortly after you saw these men

in the tavern?

I. There were men in the tavern at the time the train

passed.

- Q. But after you came into the tavern, after this man told you to keep off of the right-of-way, did the train come in soon after that?
 - A. Oh, it was a matter of a few minutes.

 Q. And did something happen to that train?

A. Well, I can not say. It slowed up.

Q. Did you hear anything?

A. There was a commotion, yes.

Q. What did you hear?

A. Just a regular-Just a lot of noise is all I could say.

Q. What kind of noise? Mr. Knoblock: I object.

The Court: He may answer if he heard anything.

A. Well, it would be hard to say. Q. Can't you describe that noise?

A. The train makes more or less noise pulling heavily.

Q. Outside of the train noise?

A. It sounded like a rattling and a lot of conversation.

Q. Did you hear anything else?

A. No, sir.

Q. Were you out at all?

A. No, sir.

992 Q. Why didn't you go out? Mr. Knoblock: I object.

The Court: Objection sustained.

A. I felt I had a right to stay where I pleased.

The Court: Sustained.

Q. You did not go out because you were warned by the men in the tavern this train was going to be bombed?

Mr. Knoblock: I object.

The Court: Objection sustained.

A. I make it my business—

Q. Did anybody tell you what was going to happen to that train?

Mr. Knoblock: I object. It has been gone over.

The Court: It has, but I will let him go ahead.

A. No, sir.

The Court: Cross-examine!

Mr. Knoblock: No cross-examination. The Court: Call the next witness.

993 FRANK MUTCHLER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, a in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Frank Mutchler.

Q. Where do you live?

A. Well, I live a little ways below where the dispute

happened.

Q. That doesn't tell us anything. Where do you live with reference to the road that leads south from Barton-ville? Do you know where Hollis is?

A. Yes.

Q. Do you live near Hollis?

A. Yes.

Q. Whereabouts in Hollis?

A. Scholl's.

Q. At Scholl's?

A. Yes.

Q. Were you on the road January 2, 1942, paralleling the T. P. & W. Railroad?

A. Yes.

Q. And did you or not see the train that had some difficulty down by the Elm Grove Tavern?

A. I did.

Q. And where were you?

A. Well, I was coming up the road going to the store.

Q. And how far were you from the train when you first

A. Oh, I would say about a hundred yards, or some-

thing.

994 Q. And what did you see? What was the first thing that you saw as you came up there?

A. I seen two cars pull over to the side of the road, and

some men jumped out and walked over to the side of the road and started hurling at the train.

Q. Hurling what?

A. I don't know what they was throwing.

Q. Did you see anything strike the train?

A. No; I heard the sound of something hit the train, though.

Q. Did one of these men leave immediately?

A. I don't remember seeing him.

Q. There were two men, would you say, or how many?

A. There was about a dozen men.

Q. What happened that as you approached this train, and got nearer to it? What did you see?

A. They kept on throwing, and there was about six shots

fired from the train, and one of the men got hit.

Q. Where was he when you saw him? Did you see him at the time?

A. Yes.

Q. Where was he?

A. He was standing up there on the ridge where they were standing throwing.

Q. What was he doing? A. He was throwing, too.

Q. Did you observe any steam coming from the engine on either side?

A. I didn't notice.

Q. Did you see any as it approached? A. Yes, there was some as I came closer.

Q. You saw the engine as you came closer, is that it?

995 A. Yes.

Q. How close to the engine were you when it finally stopped?

A. Oh, let's see. I imagine I was about fifty yards away.

Q. Fifty yards away?

A. Yes.

Q. Which way were you from the engine?

A. I was coming up north.

Q. What I want to know is how far were you from the engine when the engine stopped.

A. About fifty yards.

Q. And you were then toward Hollis from the engine, is that right? Between the engine and Hollis, is that right?

A. Yes.

Q. Will you answer so we can hear you?

A. Yes.

Q. Were there any other people along the road there?

A. No, there was some cars that went by, but that was all.

2. How many men altogether did you see there?

A. I imagine there was about a dozen.

Q. Did you see any coming out of this tavern just before this engine got there?

A. No, I didn't.

Mr. Heyl: That's all. You may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Frank, how old are you?

A. Sixteen.

Q. Were you just out in the hallway discussing this 996 matter with Attorney Heyl?

A Yes.

Q. And did he fell you what he wanted to know in here!

A. You mean-

Q. Did he tell you what he wanted?

A. He discussed some of it..

Q. I see. And you say you saw some shots fired from the engine of the train?

A. Yes, it came from the train.

Q. And, as far as you could tell, one of those shots hit one of the men there on the side of the road?

A: That's right.

Q. You don't know just where or when the steam was turned on in that train?

A. No, it hadn't stopped.

Q. The steam was still going as it went by you?

A. It didn't go by me as it was coming down.

Q. How far were you from these men standing there at the side of the road when you say they—the throwing started?

A. About fifty yards.

Q. . You were about fifty yards from the men?

A. Yes.

Q. And you say the train stopped about fifty yards before it got to you?

A. Yes.

Q. And then the train stopped just about where the men were standing, is that right?

A. Yes.

Q. Honestly, Frank, you don't remember much about this, do you?

97 Mr. Heyl: I object to that.

The Court: Yes, to the form of the question.

Q. This isn't very clear to you, is it, Frank?

Mr. Heyl: I object as improper. The Court: He may answer that.

A. It has been a while back.

Q. You don't remember these things very distinctly, do you?

Mr. Heyl: I object as improper. The Court: He may answer.

A. I remember pretty-well.

Q. You do?

A. Yes.

Q. Who have you talked to about this?

A. I talked to my parents is all.

Q. To your parents? Talk to anybody else?

A. No.

Q. Do you know how Mr. Heyl knew you knew something about it?

A. No, I don't.

Q. Did Mr. Heyl show you some pictures out in the hall regarding the scene of this accident?

A. Yes, he did.

Q. Did he show you on the pictures where the accident

happened?

A. No. They showed where—the front of Elm Grove Tavern, but that happened a little south of it, and those pictures didn't show that.

Q. The pictures don't actually show where this incident

occurred, do they!

Mr. Heyl: I object as improper cross-examination.

The Court: Objection sustained to that.

998 Q. About how far south of the Elm Grove Tavern did this dispute arise?

A. Oh, it was a small distance. I couldn't judge how far it was.

Q. You don't know any of the parties that you saw there, do you?

A. No, I don't.

Q. You didn't see— You didn't recognize any of the men that were throwing there, and you don't recognize them now, do you?

A. No.

Mr. Knoblock: I think that's all. The Court: Call the next one.

999 WALLACE Y. WARE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name.

A. Wallace Y. Ware.

Q. Where do you live?

A. 118 Callender, Peoria.

Q. And what is your business?

A. Chief engineer, Toledo, Peoria & Western Railroad.

Q. How long have you been chief engineer?

A. About five and a half years.

Q. Are you familiar with the entire road of the Toledo, Peoria & Western Railroad?

A. Yes.

Q. Are you familiar with the location of its yards in East Peoria?

A. Yes.

Q. And the tracks that are used going through Peoria!

A. Yes.

Q. On December 29, 1941, I will ask you if you left the yards in East Peoria to go to the hard road 24 and beyond that?

A. Yes.

Q. Did you travel over the lane that leads from the yards to the hard road 24?

A. Yes.

Q. Who was with you?

A. Mr. Hultgren,

Q. Who was driving the car?

1000 A. Mr. Hultgren.

Q. In which seat were you seated?

A. I was seated on his right.

Q. What, if anything,— About what time in the evening was that that you started out there?

A. About 8:45, as I remember.

Q. Does that lane have any name outside—aside from the lane leading to the T. P. & W.?

A. Sometimes called Heppe's lane.

Q. H-e-p-p-e-'s?

A. Yes.

Q. Is that part of the property of the Toledo, Peoria & Western Railroad?

A. Yes.

Q. As you were coming out of that lane, I will ask you what, if anything, you noticed in the roadway or along the lane!

A. As we were coming out, Mr. Hultgren remarked-

Mr. Knoblock: I object.

.The Court: Objection sustained.

Mr. Elliott: Mr. Hultgren made some remarks. You can't tell what he said.

Q. What, if anything, did you observe?

A. I didn't observe anything unusual coming out of the lane.

Q. When you got to the end of the lane, what did you find?

A. The pickets were on duty at the end of the lane.

Q. Approximately how many?
A. I couldn't say as to that.

Q. Have you any judgment as to the number?

Mr. Knoblock: I object as having been asked and 1001 answered.

The Court: He may answer.

A. I would say six or eight, anyway.

Q. Where were they with reference to the end of the

A. Right at the end of the lane on each side of the car as we pulled up and stopped.

Q. Did they say anything to you as you stopped?

A. Not that I recollect.

Q. From where did you go there?

A. We went down to the west end of the yard, which is about three-quarters of a mile.

Q. Is that near what is known as the Lake Erie junction?

A. Yes.

Q. And the viaduct?

A. And the viaduct, yes.

Q. How long were you gone before you came back to the lane?

A. Oh, around ten or fifteen minutes.

Q. When you got back to the end of the lane, were these same pickets there?

There were some pickets there. I couldn't say that they were the same.

Did you or not stop there?

We stopped just after we entered the lane. What was the occasion of your stopping?

We saw some roofing nails spread over the entire width of the lane there for some distance down the lane.

About how far, in feet, down the lane were these

roofing nails spread?

A. I would estimate they started about a hundred 1002 and fifty feet down the lane, and extended probably two hundred feet.

How many nails? That is, how thick were the nails

spread, if you can give an estimate?

A. They were thick. They covered the entire width of the lane for this distance in there.

What was the appearance of those as you entered in

there, from your headlights?

You could see them shine in the headlights.

What, if anything, was done before you drove on

through?

A. We drove up to the-close as we could get and keep out of the nails and stopped the car, and Mr. Hultgren wentdown to the yard to get the broom to sweep it so we could get on through.

Q. Did he sweep it ahead of you!

Yes.

Were those nails spread over there in the quantity that you have mentioned as you came out of the lane fifteen minutes before?

A. I didn't see them.

Q. Did you have your headlights on as you were coming out?

A. Yes, sir.

You had the same headlights on as you started back into the lane?

Yes, sir.

You did not observe them as you came out, but did as you went in?

Yes.

How long did it take to sweep those nails off?

Mr. Knoblock: I object to that.

The Court: I think he may answer. Q. How long did it take Mr. Hultgren to sweep the nails off for you to go ahead?

A. Oh, probably fifteen minutes.

Q. What did you do as he was sweeping them off?

A. Well, I kicked some of the scattered ones out of the way, and drove the car on up to give a better light so we could get them all out.

Q. You did that so you wouldn't have a puncture?

A. Yes.

Mr. Knoblock: I object; immaterial.

The Court: Yes.

Q. Mr. Ware, you say you are familiar with the road of the T. P. & W. and the various tracks that it uses, including its yards?

A. Yes.

Q. From what point to what point does the railroad extend?

A. From the Indiana state line at Effner to Keokuk, Iowa.

Mr. Knoblock: I think this is repetition.

Mr. Elliott: This is preliminary for another matter.

The Court: Shorten it up as much as you can.

Q. I will ask you if you have prepared a plat showing the trains that moved on Monday, December 29, Tuesday, December 30, Wednesday, December 31, January 1, and Friday, the 2nd, and Sunday, January 4, and Monday, January 5.

A. Yes.

Q. From what data did you prepare this plat?

A. From our records in the office.

Q. You may look at the plat which I will now ask the reporter to mark "Plaintiff's Exhibit 21", and state what the top line indicates on this plat.

1004 A. The heavy line indicates the T. P. & W. Railroad from Effner to Keokuk and a branch to Warsaw and a branch from LaHarpe to Lomax.

Q. The left edge of the plat is the westerly edge, is it?

A. Yes.

Q. Westerly end of the road?

A. Yes.

Q. Are the county lines shown on that plat?

A. Yes.

Q. Now, coming down to the next line, taking Monday, the 29th: In what way is the daytime and the nighttime indicated by days?

A. The nighttime is shaded and the daylight shows

white on the plat, clear white.

Q. What do the lines on those respective dates indicate?

A. The movements of trains from the yard to Effner and Hamilton.

Q. And are the numbers of the trains, as shown upon those respective dates, shown?

A. Yes,

Q. Whether they are east-bound or west-bound?

A. Yes.

- Q. And what do the red spots on the first, or top, line.
- A. The red spots indicate locations where there were acts of violence or threats, or some interference with the operation of the railroad.

Q. Is that also true as to the red spots on the lines of

the respective dates?

A. Yes, and it shows the approximate time of the acts.

Q. Were those taken from the records of the company!
A. Yes, sir.

1005 Q. And you have made this plat as indicating the movement of those trains and the approximate time when reports of acts were shown?

A. Yes.

Q. Is that true and correct from the reports that you had of the company?

A. Yes.

Q. The details are shown in the column at the left hand side?

A. Yes.

Q. Near the middle of the plat there are several lines. Is that the location of the yards?

A. Yes, and the movements of the yard engines.

Q. Were there any trains moved at all on January 3?

A. No train movements on the 3rd.

Q. And the black lines indicate the movements on the other days from December 29 to and including Monday, January 5, but excluding Saturday, January 3?

A. Yes.

Mr. Elliott: I offer in evidence the plat marked PLAIN-TIFF'S EXHIBIT 21.

Mr. Knoblock: We object to it for the sole reason that it unnecessarily encumbers the record:

The Court: Is that all with this witness?

Mr. Elliott: Yes.

The Court: You may cross-examine.

Mr. Elliott: There is one other thing I want.

Q. Mr. Ware, I will ask you if you are familiar with the greasing of rails? The flanges of rails?

A. Yes.

Q. You may explain what sort of greasing it put ,

1006 on the flanges of the rails.

A. Well, there is a heavy grease used to grease the wheel, flanges of the wheel, as they pass over this machine.

Q. And does that in any way grease the top of the rails?

A. Not if it's working properly.

Q. What sort of grease is used, and what is the purpose

of greasing the flanges?

A. It's a heavy grease, and it is used to reduce the wear on the wheels and the rail, and also to permit heavier tonnage to be handled up hills.

Q. Do you know the effect of putting grease on the top

of the rail?

A. Yes. That destroys adhesion. The locomotive depends upon adhesion to pull the load behind it.

Q. In other words, it would destroy traction?

A. Yes.

Q. Take a train going uphill: If the top of the rail is greased, do you know what the effect would be,—

Mr. Knoblock: I object to that. Q. —from your experience?

The Court: I think it is self-evident, but he may answer.
Mr. Knoblock: The amount of grease would have some effect.

A. It would tend to stall the train:

Q. What about the greasing of the rail on a curve on a hill? What would be the effect of that on a train?

Mr. Knoblock: Same objection.

The Court: I think he may answer.

A. On top of the rail?

1007 Q. Yes.

A. That would have the same effect. It would tend to slow down and maybe stall the train.

Q. Would it or not have the possible or probable effect

of derailing on a curve?

Mr. Knoblock: I object to what the possibility or probability might be.

The Court: He may answer. Answer whether it would or not.

A. I couldn't answer that definitely.

Q. It would depend upon how fast the train was going, and how hard it was working, wouldn't it?

A. Yes.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. I will ask you if there was on December 29, and up to and past January 3, 1942, any greasing machine at the New Philadelphia hill?

A. No.

Q. Had there been for sometime previous to that?

A. There had not been for sometime.

Q. That matter is one of the matters under your jurisdiction, is it not?

A. Yes.

Q. Mr. Ware, have you observed what the effect of a switch being half open has upon the movement of a train?

Mr. Knoblock: I object as having been asked and answered by other witnesses.

1008 The Court: I think it has been answered by a lot of witnesses, but he may answer.

A. It is the most dangerous position of a switch—to cause the derailment of a train.

Q. To have it half open?

A. Yes.

Mr. Elliott: That's all.

Cross-Examination by Mr. Knoblock.

Q. Mr. Ware, on December 29, 1941, when you left the yards with Mr. Hultgren, you do not know nor did you see anyone place any nails or any other objects in the lane that you have described?

A. I didn't see them.

Q. And you have no idea who did it?

A. No.

Mr. Knoblock: That's all.

The Court: There are two exhibits which have been offered and not passed upon, this and the preceding one, which had to do with the amount of business transacted by this railroad over a period of time, showing state and interstate business.

You haven't made your objection to the first. Have you

any objection to them?

Mr. Knoblock: I object to both as unnecessarily encumbering the record, and not proving any issues.

The Court: I think they may be admitted, both of them.

1009 ERNEST W. STERNBERG, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Ernest W. Sternberg.

Q. Where do you live? A. Washington, Illinois.

Q. And where do you work?

A. M. Ebert Company.

Q. You were subpoenaed off of your job, weren't you, this morning?

A. Yes, sir.

- Q. Where are you working in Peoria? A. At the Hiram Walker distillery.
- Q. And were you in the intersection of the lane leading to the T. P. & W. yards from Route 24 on the night that a man was injured there?

A. Yes, sir.

Q. Were you driving the truck that collided with Mr. Thompson's car?

A. Yes, sir, I guess that's his name. I never knew the gentleman's name.

Q. Was there anyone with you in the truck?

A. Roy Trowbridge.

Q. When that happened, did you see Mr. Thompson, driver of the car?

A. Yes, sir.

Q. Where did you see him?

A. Right out in front of my car by the lights.

1010 Q. Where was his car?

A. He pulled his car on west of the entrance, right at the cemetery entrance, along in there some place, as near as I can tell.

Q. That is west of the impact?

A. That's right.

Q. Where did you come together? Where did you collide? At what point on the road?

A. Right at the road that comes up from the T. P. & W.

Q. That is the lane?

Yes, that is the lane.

Q. Had you observed pickets there before that time?

A. I seen somebody along in there.

Q. While Mr. Thompson was talking to you after the collision, and after the two vehicles were stopped, what occurred?

A. Well, all I heard was someone say, "Get him!"

couldn't see. It was dark toward where the car was.

Q. . Whose car?

A. Thompson's.

Q. Did you observe some men up in that locality?

A. Yes, I seen some up in there.

Q. Is that all you saw and heard?

A. That's all I saw and heard.

Q. Did you go up there?

A. No, I did not.

Mr. Heyl: That's all.

1011 Cross-Examination by Mr. Knoblock.

Q. Did you see Mr. Thompson's car in plain view as he came out of that lane?

A. Well, it was so close to me that I was pretty near

there when he came out.

Q. And did Mr. Thompson stop before he came on the highway there?

Mr. Heyl: I object; not material, and not cross-ex-

amination.

The Court: I don't think we ought to try this accident here.

Is that all with this witness?

1012 ROY TROWBRIDGE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Roy Trowbridge.

Q. Where do you live?

A. Washington.

Q. And what is your business or occupation?

A. Working with a well machine.

Q. For Mike Ebert?

A. Yes, sir.

Q. Were you subpoensed off of your job this morning?

A. Yes, sir.

Q. And came here with the Marshal in response to a subpoena?

A. Yes.

Q. You were riding with Mr. E. W. Sternberg when he collided with Thompson's car at the lane—

A. Yes, sir.

Q. -near the T. P. & W. property?

A. Yes, sir.

Q. Tell the court what you saw there that night, and heard.

A. We was going toward Washington going east. There was a car drove out of the lane coming from the T. P. & W. roundhouse, and I seen the light, and I thought first he was going to stop, but he didn't.

Mr. Knoblock: I object.

Q. After that, what happened?

The Court: Tell what happened.

Mr. Knoblock: I withdraw the objection.

The Court: All right!

A. Then he hit the car, I would say it was toward the front door, so we pulled off the side of the road, and Mr. Sternberg got out, and about that time the man in the car we hit come down and pulled a billfold out of his pocket, and gave him the number.

Q. Then what happened?

A. The car we hit stopped up toward the cemetery road, and I was in front of the car watching Ernie write down the number, and there was kind of a commotion up there, and I just glanced up and there was two or three men went across the road. I heard them say, "Get him!" and I never paid no more attention to it. That is all I know about it.

Q. Where did they go with reference to the car that hit you that was parked up there? Did they go toward that car, or where were they going?

A. I think they was just crossing the road.

Q. Going toward that car? .

A. As far as I could see. It was dark.

Q. You didn't go back up there?

A. No.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

Mr. Heyl: I want to recall Mr. Kipling.

1014 HAROLD E. KIPLING, recalled, having been previously sworn; testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. You ere the same Harold Kipling that testified vesterday?

A. Yes, sir.

Q. .I will ask you if you were present when some photographs were made yesterday by Mr. Barbee!

A. Yes, sir.

Q. And who directed you to have those photographs taken?

A. Mr. Heyl.

Q. And did you see all the photographs taken?

A. Yes, sir.

Q. Were you present all the time?

A. Yes, sir.

Q. I will ask you to look at Plaintiff's Exhibit 3, and state to the court if you recognize that view.

A. That is the switch at 61 track across from Allied

Mills.

Q. Does that show the place that you referred to in your testimony the other day as being the place where the train stopped in switching for the Alfied Mills?

A. Setting some cars out on the 61 track. That's the

place.

Q. What happened at the switch that is shown in that

photograph? -

A. That's the place where John Gimming drove up behind me, got out of the car. Arthur Brewster was in the car. Two special agents were standing here at the switch when the brakeman that was doing the setting out, and the conductor. George Kneisley came up waving a club.

1015 Mr. Knoblock: Wait a minute!

The Court: Sustained.

Mr. Hevl: I am trying to identify the spot.

The Court: I don't think we ought to rehearse the testimony.

Q. Is that view shown in the photograph in the same condition it was on January 2?

A. All except the cars and the men were there.

Q. Outside of the cars and the men there, you observe no changes in the condition?

A. No, sir.

Q. Is that correct?
A. That's correct.

Mr. Heyl: I reoffer that photograph in evidence.

The Court: Hasn't it been admitted?

Mr. Heyl: They were identified, and I said I would connect them up by showing—

The Court: Is this all?

Mr. Heyl: I will identify them all, and offer them at once.

Q. Plaintiff's Exhibit 4, what does that show, Mr.

Kipling !

A. That was the spot, or part of the spot, where the train was stoned and a bottle of gasoline was thrown into the cab.

Mr. Knoblock: I object to that.

The Court: Yes. For the purpose of the record, that isn't necessary.

Is that the spot you testified to before that occurrence took place?

A. Yes.

1016 The Court: And that shows all of the surroundings of that particular place?

A. That shows part of the surroundings.

Q. Are the conditions the same as the day this occurred?

A. Yes.

Q. Except the train and the men are absent?
A. Except the train and the men are absent.

Q. Look at Plaintiff's Exhibit 5, and state what that shows.

A. That shows the spot where the stoning-

Mr. Knoblock: I object.

A. That shows the spot where—

The Court: Where?

A. —the train passed.

The Court: When?

A. January 2. On January 2 the men stood there at this spot (indicating):

The Court: The one you testified to that was down at the Allied Mills, or below the Allied Mills?

A. Below the Allied Mills.

Q. Is that the spot where the train you testified to-

where the train was stoned, and where the gasoline was thrown?

Mr. Knoblock: I object.

A. Yes, sir, that is the spot.

The Court: I think that is proper. He has to identify it some way.

Q. Look at Exhibit 6, and state what that shows.

A. That shows the spot where the train was stoned and the gasoline thrown.

1017 The Court: Is that the same spot as the last one?

Mr. Heyl: Different view of the same spot.

A. Different view.

Q. I will ask you to look at Exhibit 7, and state if that is a view of the same locality?

A. Yes, sir, it is.

Q. Will you tell the court, if you can, where Lucas stood in that view when he threw the bottle.

A. Lucas stood about fifteen feet south of the end of

this guard rail.

Mr. Knoblock: What exhibit is that?

Mr. Heyl: Exhibit 7:

Q. Is that the guard rail that is shown in the upper left hand corner of the picture?

A. That's the guard rail.

Q. That is the guard rail on the highway, is it?

A. Yes, sir, that is the guard rail on the highway. Lucas stood—this is south— He stood fiften feet north. I change that statement.

Q. North?

A. Fifteen feet from the south end of this guard rail, just about fifteen to twenty feet approximately. I don't know exactly.

Q. That would be back toward Peoria?

A. Yes.

Q. You mean north on the highway toward Peoria?

4. Yes.

Q. He was between the highway and the guard rail, is that right?

A. Between the cement—the route or the main road and the guard rail.

1018 Q. I want you to state, if you can, about the height of this bank that is shown in Plaintiff's Exhibit 7.

A. I would say that bank was from seven to ten feet high.

Q. From the rail?

A. From the rail to the shoulder of the road.

Q. And this tavern that's shown in Plaintiff's Exhibit 4, is that the Elm Grove Tavern?

A. Yes, sir, it is. 4

Mr. Heyl: We reoffer Plaintiff's Exhibit 3, 4, 5, 6 and 7. The Court: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Now, Mr. Kipling, you say Lucas was standing in Plaintiff's Exhibit 7 fifteen feet away from which end of that guard rail?

A. From the south end toward the north; from the

south end of the guard rail north.

Q. The guard rail is not shown in any way in Plaintiff's Exhibit 5, is it?

A. I don't know. I will have to see the picture.

Mr. Heyl: Let him see it.

Mr. Knoblock: No further cross-examination.

Mr. Heyl: Is that all?

The Court: We might as well pass on these.

Any objection to these exhibits?
Mr. Knoblock: I don't believe so.
The Court: They may be admitted.

1019 CLARA ALBEE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Elliott.

Q. You may state your name, Mrs. Albee.

A. Mrs. Clara Albee.

Q. A-l-b-e-e-, is it?

A. Yes, sir.

Q. Where do you reside?

A. At the home of Mr. and Mrs. George P. McNear, 202 Moss.

Q. In the City of Peoria?

A. Yes.

Q. That's this Mr. McNear who is seated back of me?

A. Yes.

Q. Were you at the home of Mr. McNear shortly after noon on January 5?

A. I was there all day.

Q. Was there a telephone call?

A. There was.

Q. About what time after noon was there a telephone call?

A. About 3:15 or 20.

Q. Did you answer the telephone?

A. Yes, sir.

Q. Did the party who called say who he was?

A. He did not.

Q. Will you please tell the conversation that this manor what this man said?

Mr. Knoblock: I object to this.

Mr. Elliott: I want to say, Your Honor, the 1020 threat was made as to Mr. McNear.

The Court: I think she may answer.

Mr. Knoblock: This matter has been in the newspaper for several days, and what some crank may have done I don't think it is material.

The Court: That may be true, and I am saying I will pay little attention, and perhaps other courts would, but I think you have a right to the testimony. There isn't any jury, and you won't be harmed by it.

Q. Go ahead and tell what the conversation was.

A. I answered the telephone, and he wanted to know-when I said, "Hello", he said, "Hello, scab", and I said, "What did you say?" and he repeated it. He said, "Is this George P. McNear's residence?" I said, "Yes, it is." He said, "Is Mr. McNear here?" I said, "He is working." He said, "Does George P. McNear ever work?" He said, "Scab", and then he used some vilê language which I am not going to repeat, and he said, "If he doesn't watch out, he is going to get his head blown off some of these days", and I hung up on him. I didn't hear anything else.

Q. When you say he said he was going to get his head

blown off, was that vile language?

A. Yes, sir, it was.

Q. And so vile you don't want to repeat it?

A. Yes.

Q. Later in the afternoon was there another telephone call?

A. Yes, there was.

Q. About how long after this first telephone call?

A. This last telephone call was about 5:30, as near as I can remember.

Q. Tell whether that was a man or woman that called.

1021 A. It was a man.

Mr. Knoblock: In order to keep the record straight, I move that answer be stricken.

Q. Tell us what the second telephone call was, what

was said, and what you said.

A. He asked if it was Mrs. McNear answering. I said, "No." He said, "Is she there?" I said, "No." He said, "Is Mr. McNear there?" and I said, "No", and he told me one of Mr. McNears special agents was badly injured, and he wanted him to come over immediately.

Q. Wanted who?

A. Mr. McNear.

Q. What did you say to that?

A. I asked him if he called the office because I thought it probably was true. He said he hadn't, and later I called the office.

Q. To report the incident to the office?

A: To report it, yes, sir, and the girl that answered teld me-

Q. What she told you would not be proper, but did you report the incident to Mr. McNear's office?

A. I did.

Q. Did you inquire—have them make inquiry as to whether or not one of the agents had been hurt?

A. They did.

Q. Was a report later reurned to you?

A. It was.

Q. Had there been any?

A. No, there hadn't.

Mr. Elliott: That's all. Wait!

Q. Had there been anybody injured, I meant?

Cross-Examination by Mr. Knoblock.

Q. Mrs. Albee, you absolutely have no idea who made that call on January 5, 1942, do you?

A. No.

Q. You don't know where the call came from in the City of Peoria, do you

A. No.

Q. You don't know whether it came from any of the striking employees of Mr. McNear's company or not, would you?

A. I wouldn't have any way of finding out.

Q. All you know is a random telephone call came in and you answered it, and these statements were made?

A. That's all.

Mr. Knoblock: That's all.

The Court: Do you make any motion at this time?

Mr. Knoblock: I make a motion to strike all the testimony.

The Court: The motion will be sustained.

I'll tell you why it is sustained. The same thing has happened to me when a drunk called up and saying, "If you don't do so and so, something is going to happen." I didn't take enough interest to find out.

Mr. Heyl: The court has held in this class of cases, and in the Circuit Court of Appeals has held, where you show

where threats have been made, telephone conversa-1023 tions to officers and representatives of the company, those are competent.

The Court: I realize that, but it wash't a threat.

Mr. Heyl: Yes.

The Court: They said someone was hurt in the yards.

Mr. Heyl: The first one said he would get his head blown

off.

The Court: I am going to sustain the objection. If it's appealed on either side, your record goes up. I don't think it is material, but that doesn't prevent you gentlemen from showing whatever you wanted.

1024 STEVE BURBAGE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. Steve Burbage.

Q. Where do you live, Mr. Burbage?

A. Big Hollow Road.

Q. Peoria !

A. Yes.

Q. What is your business or occupation?

A. Well, I was policeman and guard.

Q. For the T. P. & W. ?

A. Yes, sir.

Q. What did you do before that?

A. I was a police down at LeTourneau's.

Q. Where t

A. At LeTourneau's.

Q. . How long?

A: About four years.

Q. You were employed by Mr. Kipling when this strike occurred as a special agent, were you not?

A. Yes, sir.

Q. Were you on the train that left Peoria for Keokuk, Iowa, on January 2, 1941?

A. I was.

Q. 1942, rather. Where were you riding?

A. I was on the engine.

1025 Q. And were you present when the train was stopped near the Elm Grove Tavern?

A. I was.

- Q. Where were you at that time on the engine?
- A. I was between the coal tender and the engine.
- Q. And what did you observe there? Anything?

A. Lot of rocks throwed, stones and gasoline.

Q. Did you see the gasoline?

A. It exploded right in the engine where I was:

Q. Did you see it thrown?

A. No, I never seen it. Q. What, if anything, did you do there?

A. What?

Q. What, if anything, did you do while that was going on, the throwing of the stones and the throwing of the gaso-

line and so on? What did you do?

A. First, I tried to put the fire out. I found out I was getting it on me and the fire hose was froze up, couldn't get the water to run, and I tried to smother it out and stones kept coming in so fast that we didn't have time, so about the only thing I knew was to pull my gun and shoot, and I shot six times down at the ground.

Q. On which side of the engine?

A. On the right hand side. Mr. Knoblock: Which side?

A. On the right hand side. Q. What did you aim at?

A. Right down below the steps.

Q. Did you point the gun at any person!

Q. And at the time you shot, where was the engine!

A. Where was the engine?

Q. Yes.

A. It was on the railroad track.

Q. Where, with reference to this bank? Was it traveling along or standing or what?

A. Yes, it was traveling.

Q. Could you identify by a photograph about the position of this engine when you shot? Look at this photograph, Plaintiff's Exhibit 7. Can you state from there about where the engine was when you shot at the ground?

A. No. I don't believe I could.

Q. Could you from Plaintiff's Exhibit 4? A. It was right in this district some place.

Q. What?

A. It was right around in there.

Q. Right around in the vicinity shown in Plaintiff's Exhibit 4, is that what you mean?

A. Right in that vicinity.

Mr. Knoblock: I though he said he couldn't identify Plaintiff's Exhibit 4.

Mr. Heyl: No, he identified Plaintiff's Exhibit 7.

That's all.

The Court: Cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. Burbage, what day did you go to work for the T. P. & W.1

1027 A. January 1, 1942.

Q. And who hired you?

A. Kipling.

Q. And when did Kipling come to you and ask you to go to work?

A. Well, let's see. I think it was the 29th. I am not sure.

Q. 29th of December?

A. 29th of December.

Q. Then you reported to work on the 1st day of January? Did you ride on a train that day?

A. Yes.

Q. On the 1st?

A. Yes.

Q. Where did that train go?

A. I was just riding around the yards.

Q. Who was running the train on the 1st?

A. Oh, I just make one trip. I don't know who it was.

Q. Who was the engineer?

A. I don't know.

Q. Who was the engineer on January 2?

A. Gulick.

Q. Who was the fireman?

A. McAvoy.

Q. Who was the conductor?

A. I don't know.

Q. Who was the assistant fireman?

A. The who?

Q. The student fireman.

A. The student fireman?

Q. Yes.

1028 A. I think it was O'Brien. I am not sure.

Q. How many special agents were riding in this cab on this day, January 2, 1942?

A. I couldn't say.

Q. You can't recall whether you were the only special agent on that train or not?

A. No.

Q. There was only just Gulick and O'Brien and McAvoy and then this other member of the engine crew that you don't know and yourself, is that true?

A. I didn't know them.

Q. Just five of you on there, is that right?

A. There was more than that on it.

Q. What were the other men doing?

A. I don't know. I didn't have time to look at them.

Q. You looked at them all the way from the East Peoria vards to Hollis?

A. They was just riding then.

Q. You had an opportunity to look at them?

A. Yes.

Q. Did you see any of the rest of them in there carrying guns?

A. I didn't see any.

Q. You didn't see anybody's gun but your own?

A. No.

- Q. What kind of gun?
- A. Smith & Wesson. Q. What calibre?

A. 38.

Q. Who gave it to you?

1029 A. Kipling.

Q. On what day?

A. The 2nd, the same morning I left.

Q. Did you carry a deputy sheriff's commission at that time to carry a gun?

A. Yes.

Q. From what county?

A. Peoria County.

Q. When were you so commissioned?

A. I was commissioned this last time the 1st day, 1st day of January.

Q. You were commissioned the 1st day of January,

19421

A. Yes.

Q. Who commissioned you?

A. Stonebock.

Q. Where were you standing when you started to shoot!

A. I was standing up against the coal tender looking out in front.

Q. You were shooting through the curtain?

A. No. I was shooting down between, at the bottom between the curtain and the bottom.

Q. Did you see any other special agent shooting at that time?

A. I never noticed.

Q. Did you hear any instructions from the fireman or engineer, "Start shooting, boys"?

A. I heard a lot of screaming.

Q. Did you hear that statement, "Start shooting, boys"!
Mr. Heyl: I object to that. Let him answer the former question.

Mr. Knoblock: That is the former question.

1030 The Court: Did you hear that statement?

Q. Did you hear that statement from the engineer and fireman?

A. I heard it, but I don't know who it come from.

Q. Then you started to shoot?

A. Yes.

Q. And you saw exactly what you shot, is that it?

A. Yes, sir.

Q. How high is that bank along there?

A: I imagine it's about eight foot.

And you shot right at the base of the bank, is that right?

I shot right at the base of the railroad track, right A.

down.

How fast was the train moving along that place? South of the Allied Mills there?

I imagine about ten, fifteen miles.

Q. Do you remember the blow-off cocks being put on?

I remember hearing it, yes. A.

You recall it was the right one?

It was what?

It was the right blow-off cock?

A. It was on the left hand side.

Q. Did you know that engine had one on the right?

No, I never knew it/

The blow-off cock went off before anything happened? That came first, isn't that right?

After that occurred, some of these stones and rocks began coming, is that right?

What?

After the blow-off cock was put on, then some 1031 of the stones and rocks started coming?

A. Stones started coming all the way down there:

There was a constant rain of stones from the Allied Mills down to this place where you shot?

There was a sprinkle. That was a sprinkle.

all along, and there came the heavy brigade.

Q. All along the track there was a constant sprinkling of stones?

A. Yes.

Where you shot, that was almost opposite the Elm Gate Tavern, isn't that true?

A. I wouldn't say for sure. I would think it was. was afraid to look out for fear I would get stoned.

Mr. Knoblock: I disclaim that.

Mr. Heyl: That is part of his answer.

. Q. You said, as I recall, Plaintiff's Exhibit 4,—you said showed about the vicinity where you shot?

A. I imagine. I seen that tavern.
Q. Does that picture, Exhibit 4, include Elm Grove
Tavern in there? Take a look at it.

Mr. Heyl: It shows for itself.

Elm Grove, ves.

Q. From the point at the Allied Mills all the way down there, you say, there was a steady trickle of rocks coming!

A. Yes.

Q. How far would you say that distance was?

A. Oh, I don't know.

Q. What is your best judgment?

A., I am a poor guesser.

Q. You are? Did you recall getting off the engine 1032 at the Allied Mills?

A. I seen two fellows get off there right close to the Allied Mills.

Q. Those were two special agents, were they?

A. No, I don't know.

2. You don't know?

A. I didn't know a special agent from the railroad switchman.

Q. You don't know yet whether there were any special agents on that train besides yourself?

A. I know now.

Q. You know now? You have been told that by some-body else?

A. No, I know them now.

Q. Before you were out at LeTourneau's, you used to drive a cab around Peoria, didn't you?

A. Yes.

Q. How many years were you in that business?

A. About one year:

Q. Who did you drive for?

A. I drove Eddie's Cab, drove Yellow Cab.

Q. The curtain on the right side of that engine there, that was drawn at the time, wasn't it?

A. Drawn?

Q. Drawn, yes. Closed?

A. Yes.

Q: It had been closed that way from the Allied Mills plant all the way down to where this incident took place, isn't that true?

A. That's right.

Q. Up at the Allied Mills plant, you observed the blowoff cock being turned on, too, didn't you?

1033 A. No.

Q. In fact, it wasn't done?

A. I never heard nothing.

Q. That makes quite a bit of noise, does it?

A. It makes quite a bit.

Q. Did you ever get off of the cab of the engine up

A. I never did. .

Mr. Knoblock: I think that is all.

Mr. Heyl: One question.

Redirect Examination by Mr. Heyl.

Q. How long have you been a deputy sheriff in Peoria County?

A. Well, I have been deputy sheriff between seven and

eight years.

Q. And you were again commissioned deputy sheriff after you took this job as special agent,—

A. Yes.

Q. -is that right?

A. That's right.

Q. By the sheriff of this county?

A. That's right.

Q. And you live in this county?

A. I do.

Q. Now, did you shoot before or after the gasoline was thrown into the engine?

Mr. Knoblock: I object to that; The Court: Yes, he testified.

Mr. Heyl: I didn't hear it.

1034 The Court: He testified in direct examination after the fire he started shooting.

Mr. Heyl: I missed it. All right! That's all.

Recross Examination by Mr. Knoblock.

Q. You have never received any pay from the deputy sheriff's office, have you?

A. Never have.

Q. In fact, it has been about a year or so you were a cab driver, isn't that right?

Mr. Heyl: I object.

Q. You were a deputy sheriff even when you were a cab driver, weren't you?

A. No.

The Court: We will stop at this point.

We will recess until 2 o'clock this afternoon.

Trial Recessed at 12:30 o'clock P. M.

1035 Trial Resumed at 2 o'clock P. M.

The Court: Call the witness.

GEORGE P. McNEAR, JR., called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. You may state your name.

A. George P. McNear, Jr.

Q. Where do you live?

A. 202 Moss Avenue.

Q. What is your age?

A. Fifty.

Q. What is your business or occupation?

A. President, Toledo, Peoria & Western Railroad.

Q. How long have you been president of the Toledo, Peoria & Western Railroad?

A. Since 1927.

Q. And you are active in the management of that business?

A. Yes, sir.

Q. Now, I want to ask you first with reference to the question that has been raised in this case as to the payment of a \$10.00 bonus. Who promised that bonus?

A. I did.

Q. To whom?

1036 A. Superintendent Best.

Q. And what was the authorization?

A. Well, the authorization came about by reason of the threats which had been conveyed to us before the strike started.

Mr. Knoblock: Wait just a minute? I object to that. The Court: No, I think that is proper, the reason.

A. There had been threats conveyed to us before the strike started that no train would ever reach the Illinois River bridge going west, and no train get to Washington going east.

Mr. Knoblock: Is he reading?

A. Yes.

Mr. Heyl: This is his testimony.

Mr. Knoblock: Did you write it for him?

Mr. Heyl: No, sir, he wrote it himself. Nobody has to write for him.

The Court: He has a right to read from that. You can examine the memorandum, if you desire, on cross examina-

tion. I think that is proper.

A. On account of this extra hazard, I authorized Superintendent Best to pay each person who operated the trains a bonus of \$10.00 per day for the first few days of the strike, in addition to their regular pay, as some compensation for the risk they were willing to assume.

Q. And now, Mr. McNear, prior to December 29, 1941, did you or not hire any extra guards or any other em-

ployees to operate this railroad?

A. We did not.

Q. Now, on Sunday, December 28, 1941,-

Mr. Knoblock: December what?

1037 Mr. Heyl: December 28, 1941.

Q. —what, if anything, did you do with reference

to authorizing the employment of special agents?

A. When the strike became effective at 6° P. M. on December 28, I authorized Kipling to put on a few more special agents from the local territory, most of whom he said he knew, and on Monday, December 29, we advertised for men to run the trains?

Q. That is, for additional employees?

. Yes, sir.

Q. Now, what did you do with reference to providing a light for the watchman's shanty at the head of the lane

which leads to your property?

A. I had heard of the nails thrown in the lane Monday evening, and early Tuesday morning, December 30, I ordered a powerful light installed at the intersection of the lane and Route 24, to be so arranged that it would illuminate the intersection and the general vicinity, but not to blind passing motorists.

Q. Did you put a shanty there?

A. I also asked our people to move a cabin to a point on our property just east of the head of the lane near Route 24 where a special agent was to be stationed.

Q. Did you see anyone in the lane, or at the head of the lane, after this strike started who had a club or clubs in their hands?

A. Yes.

Q. When did you first observe anyone with clubs?

A. On Tuesday evening about 4 P. M. I went over to the yard. I was blocked from entering the lane by a T. P. & W.

truck which was standing up the lane, and which was 1038 fixing up around the cabin which had just been placed on the east side of the lane. While standing there

on the east side of the lane. While standing there, I observed about fifteen pickets standing in the hard road. One of them, John Feuger, was carrying a large table leg. It was about three feet long, around at the small end, which he had in his hand, and square, with sharp edges, at the larger, or other, end. I asked him why he was carrying such a thing as that, that there was no need for anything like that.

Q. What did he say?

A. As I remember, he said they needed some reinforcements.

Q. So they used table legs, is that it?

A. There was just one of them.

Mr. Knoblock: I object. The Court: Sustained.

Q. What kind of a fire was there at that point?

A. At that time there was a fire of wooden tree branches and other pieces of refuse wood.

Q. Did you later furnish any coal to these strikers?

A. Yes. Mr. Feuger said it was cold, and asked for some coal to keep warm. I told him I would see what I could do. As soon as I got down to the master mechanic's office, I asked Mr. Green, our master mechanic, to send the pickets a truck load of coal, which he did immediately.

Q. And after you delivered the coal, what happened that evening to one of your employees at the place where

you delivered the coal?

Mr. Knoblock: I object, unless he knows of his own knowledge.

Mr. Heyl: I think he does.

A. Yes, I do. Following that, Mr. Merrill was assaulted.

1039 Q. Was that following the delivery of the coal to keep the pickets warm?

A. Yes, within less than an hour.

Q. Was there anything placed in the roadway leading from the hard road to your yards?

A. Yes. After they got the coal, they put sort of a

salamander in part of the traveled road in which they put the coal to keep warm, which blocked the road.

Q. Later did you furnish the pickets some more coal?

A. I told one of them (I think it was either Friday or Saturday) that whenever they ran out of coal, we would be glad to give then some more.

Q. That was before the restraining order was entered?

A., Yes, sir.

Q. Now, were you present near the time Zeno Merrill was assaulted on December 30, 1941?

A. Yes, I was. I was in the master mechanic's office.

Q. And what did you do?

A. Word came that someone was being assaulted at the end of the lane. I started up the lane, but was met about a third of the way up by Mr. Kipling, who told us Mr. Merrill had been hurt.

Mr. Knoblock: I object to this.

The Court: Yes, objection sustained.

Q. Did vou see Merrill?

A. Yes; they brought Merrill into the master mechanic's office.

Q. Did you do anything with reference to calling police?
A. Yes, I called the East Peoria police to come over.

Q. And did they come?

A. Yes. In about ten or fifteen minutes a police-1040 man came over, and he got the names, and then I arranged with an attorney to go to the East Peoria police station, and to cause the arrest of the parties named by Merrill and Thompson.

Q. Now, on Wednesday morning, December 31, what, if anything, did you do with reference to requesting the officials of Tazewell County to protect your men and your

property?

A. Early Wednesday morning, December 31, I telephoned Sheriff Donahue, asking if he would have deputy sheriffs at the entrance to the lane on twenty-four hour duty to prevent further trouble. Sheriff Donahue said he would come over to investigate the situation, and would try to have someone at the entrance on twenty-four hour duty. As to preventing trouble, he said he did not know how much could be expected. He said that the men arrested last night for assaulting Merrill—

Mr. Knoblock: I object. I think Donahue's testimony

is the best testimony on that.

The Court: I think not. I think it is part of the case to show what has been done on the part of this company to prevent violence. I think that is part of the law.

You may testify.

A. Sheriff Donahue told me that the men arrested last night for assaulting Merrill were let out almost immediately, that George Donaldson, County Judge of Tazewell County, and City Attorney of East Peoria, was representing the Brotherhoods and their members, and that with this kind of a set-up nothing could be accomplished by arresting people, as they would be let out through Judge Donaldson's

influence as fast as they were brought in for arrest.

1041 Q. Is that Judge Donaldson the same Judge Donaldson who appears in this court in defense of this case?

A. Yes.

Q. What else did the sheriff tell you?

A. In accordance with this promise, Sheriff Donahue came over to our yard at about 11 o'clock in the morning, and left a deputy at the head of the lane, and said that someone would be on duty there during the entire twenty-four hour period from that time on.

Mr. Knoblock: What day?

Q. What day was that? A. That was December 31.

Q. All right! What else did he say?

The Court: Whom do you say left a deputy there?

A. Sheriff Donahue.

Mr. Heyl: Donahue!

A. Sheriff Donahue.

Q. Go ahead!

A. Mr. Elliott and I-

AQ. That is Mr. John M. Elliott?

A. Our general counsel—had a conference with Sheriff Donahue and Deputy Goar, at which time Sheriff Donahue repeated his statements about the ineffectiveness of arresting anyone, about Judge Donaldson's representing the Brotherhoods and their members, and about the setup being bad from our standpoint so far as the local authorities were concerned. He said he only had four men to look after the entire county, and that, while he himself was willing to do what he could, we would have to realize what

he was up against, and that the aid he could render 1042 was necessarily limited. He asked us why we did not ask for an injunction, and I replied we were going to try to run the railroad with the protection of the local officials.

Q. Now, did the deputy that was placed there while the sheriff was in your office remain constantly through the strike?

A. Well, I saw him from time to time. I don't know whether he was there at all times.

Q. And did the sheriff furnish protection to your men and the property in Tazewell County?

A. No, sir.

- Q. Was there ever any protection furnished by the sheriff's office on any of the times when the trains were stoned or interfered with while they were in Tazewell County?
 - A. No. sir.

Q. Now, did you have any talk with the mayor or the

chief of police of the City of East Peoria, Illinois?

A. I think it was on January 2. I sent a wire to the mayor of East Peoria, along with wires sent to officials all along our railroad, and shortly after sending a wire Mayor Brauns called me up on the telephone. Mayor Brauns of East Peroia called me up on the telephone, and said, "George, I'm sorry I'can't do a thing for you."

Q. Did the City of East Peoria, either through the mayor's office or the chief of police, furnish any protection to your men or the property at any time after you made

the request?

A. None that I was able to ascertain.

Q. Now, were you present at the time an engine was stoned at the Swords' Siding in the afternoon of December 31, 1941?

A. No, I wasn't there when it started. I heard 1043 about it shortly after it started.

Q. Did you go over there?

- A. Yes. The first thing I did was to call the police.
- Q. What police?

A. City of East Peoria.

- Q. That is, after you received notice they were interfering with your train?
 - A. Yes.

Q. Did the police arrive there at any time before the train left the scene?

A. Well, we left there about forty-five minutes, as I

recall it, after the time I called the police. By that time they had not yet arrived.

Q. How far is it from the place where this train was

stoned to the City Hall in the City of East Peoria?

A. About a mile and a half.

Q. And it is paved road, isn't it!

A. Yes, sir. .

Q. How long would it take an automobile to travel from the City Hall to the place where this train was stoned?

Mr. Knoblock: I object. It would all depend on how

fast it was going.

A. I should think a police car could get there in five

minutes.

Q. And forty-five minutes after you phoned for assistance, and advised the City Hall the train was being stoned and the men being injured, did any policemen appear on the scene?

A. Not within that time, no, sir.

Q. Where was this train at the time you gave the word to the City Hall that it was being stoned?

1044 A. The engine was standing right on the derail at the—just east of the West Washington Street crossing.

Q. And did you go to the scene of this train?

A. Yes. I walked across the bridge to the scene.

Q. That is, the river bridge?

A. Yes, I walked over there on our bridge, the railroad bridge.

Q. When you arrived there, did you see any of the strikers, defendants in this case?

A. No, I didn't see any strikers at that time.

Q. Did you see any one of your employees there?

A. Yes. When I arrived, Messrs. Heilman, Thielbert, the engineer, DuBois and Thompson were there, along with some others whom I do not believe were employees.

Q. What did you observe with reference to the engine!

A. The engine showed the effects of the bombardment, with broken windows, broken headlight glass and marks on the side of the engine cab.

Q. What did you observe with reference to the members

of the crew!

A. They seemed to be pretty well shaken up.

Q. Now, what if anything, did you do after you got the crew back on the engine?

A. Well, I had found out in the meantime that there were interstate cars in that cut, and the first thing that I did after finding that out was to find out from the engineer whether he felt like continuing, and he said he did, and I said, "We have interstate cars to deliver for Hiram Walker", and I said, "Let's go ahead and deliver them."

Q. What did you do?

A. I got on the front footboard on the right hand 1045 side of the engine, and we moved ahead.

Q. Across the Illinois River?

A. Yes, sir.

Q. As you passed the road that is intersected by this railroad at the east end of the bridge, what, if anything,

did you observe?

A. Well, I was looking over at the highway, U. S. 24, as we started, and I observed a green automobile which was going slowly along, apparently following us. In the front seat there was a man driving who had a very angry look on his face, and he made a scab sign at us, and in the back seat, leaning against the partly opened window, with a baseball bat or some other kind of a bat in her hand, was a lady whom I did not then know.

Q. Has she been identified to you since?

A. Yes.

Q. Who was she?

A. Mrs. Newdigate.

Q. Mrs. Delman Newdigate?

A. That's what she said her name was.

Q. Who was called to the witness stand in this case?

A. Yes.

Q. What did you see her do?

A. She appeared to be saying something I could not hear, and she kept poking the bat out of the window in our direction.

Q. Did you know the other people in the car? The driver?

A. No, I didn't know the name of the man who was driving. I heard about his name since, but I didn't know his name at the time.

Q. Were you able to get the number of the automobile?

A. Yes.

1046 Q. Do you have it with you?

A. I don't have it here, but my recollection is it was 623-609.

Q. Did you learn whose automobile that was?

A. J. L. Mack,

Q. Is he one of the defendant strikers?

- A. He's one of our ex-employees, yes, sir, as far as I know.
- Q. Now, did you return to the yard, your yards, later that evening?

A. Yes.

Q. What did you observe on your way in?

A. I went over about 5 o'clock just as it was getting dark, and as I started to go into the lane there was a solid line of pickets standing perfectly still right across the entrance to the lane, and I was obliged to come to a stop to avoid hitting anyone.

Q. Later that evening did you go out? A. Yes, I went out about an hour later.

2: What did you observe then?

A. There was a large number of pickets there, about twenty men, at the entrance to the lane. As I went up the lane, I drove slowly, and as I did so I observed two pickets on my left hand side with specially-shaped paddles in their hands, and three or four other pickets with clubs in their hands.

Q. What did they do, if anything?

A. Well, as I approached, the pickets nearest my car opened a way for me to get through, but, as I moved on out slowly, one man got in front of my car and tried to stop me. I kept on moving slowly. He jumped out of the way, and then I heard some shouts, and someone threw open the door of my car, but I kept on going and the door slammed shut and I went on.

1047 Q. Do you know any of the men that were there that evening?

A. No, 1 didn't recognize any of them.

Q. That was at the regular picket line that had been established?

A. At the head of the lane, yes, sir. Q. What happened on January 1, 1942?

A. Early Thursday morning on January 1, I telephoned Kipling. He said he was losing his special agents, that they were local men and couldn't stand the stoning and abuse that they were getting from our former employees, particularly since we had given such strict orders not to use their firearms. He said he needed help, and did not

see how he could do any more with the local people re-

stricted as they were.

Q. Mr. McNear, did you or not give any directions to the chief special agent of your road, Mr. Harold E. Kipling, with reference to the use of firearms by your special agents?

A. I told him right from the start, and repeated it sev-

eral times, that we didn't want to use any firearms.

Q. Now, after you had this report from your chief special agent, Mr. Kipling, with reference to his inability to hold his special agents, what, if anything, did you do

to obtain protection for the men and the property?

A. I telephoned Pinkerton's at Chicago to see if they had any men who were used to this kind of thing that they could send down. They said they no longer supplied guards in strike situations, and referred me to another concern.

Q. What was that concern?

A. That concern gave me the name of a Mr. Goldby of the Illinois State Detective Agency.

2. You have a telephone conversation with

him f

1048 A. Yes, I had, I think, two telephone conversations with him, and I finally arranged that Mr. Goldby would come down during the day with two or three of his men, and size up the situation.

Q. Did he come and, if so, when?

A. Yes. He arrived in Peoria about 7 o'clock, as I remember, that evening.

Q. On what evening was that now?

A. January 1.

Q. That would be Friday, wouldn't it?

A. No, Thursday.

Q. Thursday, that's right.

A. I talked to Mr. Goldby, and he said he would check into the matters with the local authorities the following day, and see what arrangements could be made for protection, and that he would have his men develop what information they could.

Q. Did you have any further reports after that from

Mr. Goldby with reference to the situation?

A, Mr. Goldby reported on Friday afternoon that the authorities were willing to cooperate, and that they had made a canvass of available local men. However, they

could not find enough local people whom they could recommend, and who could stand the gaff with the situation getting as bad as it was, and they suggested getting men from Chicago who were experienced and who would be deputized. I authorized Mr. Goldby to send for these men. He did so, but by the time they got here on Sunday the restraining order had been signed, and these men were not used.

Q. Did you have any further report from Mr. Goldby.

after that?

A. Mr. Goldby reported to me on Sunday, January 4, that he found out that Mr. Coyle had a man named 1049 Red who was handling the violence end of the strike.

Q. What further did you do with Mr. Goldby?

A. Since order was restored immediately the restraining order was signed, we had no further need for Mr. Goldby's services, and he returned to Chicago, Monday,

January 5.

Q. Now, I want to go back to January 2, 1942. What did you have to do with the operation of the train west on that day, which I think has been referred to in this case

as extra 411

A. Well, early Friday morning I was aware that the violence and attacks on our trains was becoming more serious, were becoming more serious, that more threats were being made, that more of our people were becoming intimidated, including employees in classes and crafts not involved in the strike, and that our protection was disappearing because of the failure of local authorities and the unwillingness of several of our special agents to continue in our employ with the restrictions as to the use of firearms which we had imposed upon them. Then limited protection which we had heretofore used of one special agent in the engine and another in the caboose had proved inadequate, and Mr. Best reported to me that some of the train crews had expressed the desire for more protection. I therefore arranged with Mr. Best to run a train west Friday morning, and to concentrate our special agents. on that train. I called up Kipling Friday morning before the train left, and again told him to tell his men not to use their guns. I knew that the people running the strike were being kept informed as to our train movements, and that they were getting other information as to what was being done, and felt that if they knewMr. Knoblock: I object to what he felt.

1050 The Court: Yes, objection sustained.

A. Well, my decision as a result of all that was that we thought—

Mr. Knoblock: I object to what "we thought". The Court: I think he can state what he did.

A. -if we would put or concentrate our special agents

on one train, they might leave us alone.

Q. Now, after this train left, or about the time the train left the yards, did you receive a telephone call from the special agent, Kipling?

A. Yes. At about 8:30 in the morning I received a telephone call from Kipling, who was then in Bartonville.

He said three automobile loads-

Mr. Knoblock: I object to what he said. The Court: Yes, objection sustained.

Q. Did he report to you the condition he had found

along the road?

- A. That there were three automobile loads of ex-employee. who were following the train, and they had told Kipling they would get our train crew before they got to Hollis.
 - Mr. Knoblock: Oh, I object to that. The Court: Yes, objection sustained.
- Q. After you got that report from Kipling, what did you do?
 - A. I immediately put in a call for the sheriff's office.

Q. To whom did you talk? A. I talked to Mr. Vespa.

Q. What did you tell him?

A. I told him what Kipling told me, and he said he would do his best to protect our train.

Q. What did he say? .

A. That he would send a car.

1051 Q. Did you telephone any other authorities?
A. I also telephoned the state police.

Q. Whom did you talk to there?

A. I talked to Mr. Lohr.

Q. What did you tell him?
A. I told him the same thing I told Vespa.

Q. What did he say?

A. He said he didn't know whether they could do anything, and would call back in five minutes if they could.

Q. Did you ever hear anything from him?

A. No, sir.

Q. Did he ever call you again?

A. No, sir.

Q. Did the Peoria sheriff's office do anything about it, if you know?

Mr. Knoblock: If he knows of his own personal knowl-

edge.

Mr. Heyl: We will show that by someone else.

Q. Later that morning did you hear someone had been shot?

A. Yes, I heard Harold Dilley had been shot, and that he was at Proctor Hospital.

Q. What did you do with regard to that?

- A. I asked Hanna Clinic, our company surgeons, to see Dilley and do whatever they could for him, and report back.
- Q. Did you have a report from any of the surgeons in that Clinic, without stating what the report was?

A. Yes, from Dr. Burroughs.

Q. Now, Mr. McNear, what other steps did you take to get protection for your men and your property along 1052 the line of the Toledo, Peoria & Western Railroad from Keokuk, Iowa, to Effner, Indiana?

A: Early in the morning of January 2 I sent a wire to the sheriff of every county through which we operate.

Mr. Knoblock: Just a moment. I wish to object to this because, as I recall the evidence in this case, there are no identifications made of any of these defendants excepting in three counties (that is Peoria, Tazewell and Fulton), and what was done with reference to the sheriff's of other counties I insist is immaterial.

The Court: It perhaps would be. I am not going to pass on that, but the same telegrams were sent to these

three.

Mr. Heyl: If the court please, the record shows the property of this company was injured at Watseka, Iroquois County. That is a circumstance—

The Court: The objection will be overruled.

Mr. Heyl: Will you read the question to the witness,

please?

The Court: As I understand the law, it's necessary for the plaintiff company in this particular case to show that they have exhausted all methods and means by which they could prevent the bringing of an injunction. That is my understanding.

Mr. Heyl: That is correct,

The Court: That being true, I think the plaintiff, of course, must show everything he did do to try to prevent

the bringing of this particular suit and asking for 1053 a restraining order. The order itself, as I understand it,—or petition—stated every method had been

stand it,—or petition—stated every method had been exhausted for that purpose.

Mr. Hevl: That's right.

The Court: They must show that as a matter of fact. If, by the showing, he asked every sheriff in the particular district to aid him (what that might be I don't know), it would seem that would be part of the plaintiff's case.

Is that your understanding of the law, Mr. Knoblock?

Mr. Knoblock: That is my understanding of the law once a federal district court has jurisdiction, but it is our settled position that the Norris-LaGuardia Act does not automatically give jurisdiction in a labor dispute to a federal court.

The Court: I don't so understand, either, but they must

prove these other things."

Mr. Knoblock: Furthermore, there is no tying up to these defendants in any way except in the three counties, and I refer to Fulton County and in only one place, and that is Canton, and all these other places these defendants that have been named or connected with these acts of violence have been in two other counties.

The Court: I don't want to pass upon that, but there has been some proof made the railroad was injured, whether by these defendants or others, it would still be necessary for them to make an effort to prevent that sort

of thing.

Mr. Heyl: I want to make a further suggestion, 1054 and that is that the equity rules of the United States

courts provides an injunction against one man or two men or ten men binds every man who has notice of that injunction later on, and, for that reason, it will be necessary for us to show what was done all along the line so, if a preliminary injunction is granted and posted along the property, it would bind anyone who knew of the injunction.

The Court: The question is perfectly proper, and he

may state what he did.

(Question and answer read by reporter.)

A. Do you want me to enumerate those counties?

Q. Yes, you might enumerate them so the record will show.

A. Iroquois County, Ford County, Livingston County, McLean, Woodford, Tazewell, Peoria, Fulton, McDonough, Hancock, Henderson. Do you want me to read the wire?

Q. Just tell the substance of it.

A. I said in the wire that our operations were being seriously interfered with and delayed by acts of violence against train crews, damage and destruction of railroad property and equipment, acts with intent to derail trains, and other acts tending to intimidate our employees to prevent them from conducting our proper and regular operations in interstate commerce, and "request that you furnish all necessary protection to prevent such violence, damage, destruction, sabotage and intimidation and other acts tending to interfere with the operation of the railroad. Please wire collect immediately if you will furnish such protection within your jurisdiction, also if you will

supply men to convoy our trains through your county.

1055 If you advise you are willing to furnish such protection we will inform you the hour our train is ex-

pected to arrive at your line. Rush answer."

Q. Mr. McNear, what replies from these various officers and counties did you receive, without reading all of them?

A. I got no reply at all from Ford County, Tazewell, Peoria, Fulton, Hancock or Henderson. The following counties, Iroquois, Livingston, McLean and McDonough, advised they had no funds with which to give such protection. Woodford County was the only county that indicated that they would endeavor to give us protection.

Q. Now, at the same time, or at any time during this strike, and before this complaint was filed for a restraining order, did you or not communicate with the mayors or city officials of any villages or cities through which your

railroad operates!

A. Yes. At that same time, early in the morning of January 2, I sent a similar wire to the mayors of Sheldon. Watseka, Crescent City, Gilman, Piper City, Chatsworth, Forrest, Fairbury, Chenoa, Gridley, El Paso, Eureka, Washington, East Peoria, Peoria, Bartonville, Glasford, Canton, Cuba, Smithfield, Bushnell, Good Hope, Sciota, Blandinsville, LaHarpe, Ferris, Elvaston, Hamilton, Warsaw and Keokuk.

Q. What replies if any, did you receive from these

officials?

A. I received no reply from Crescent City, Piper City. Peoria, Bartonville, Glaford, Canton, Cuba, Smithfield, Good Hope, Blandinsville, Warsaw or Keokuk. As to the other towns, the following towns said they were unable to give the protection requested: Sheldon, Watseka, Gilman, Chatsworth, Forrest, Fairbury, Chenoa, Gridley, El

Paso, Eureka, Washington, Bushnell, Sciota, La-1056 Harpe, Ferris, Elvaston and Hamilton. The City of

El Paso sent a wire indicating that they would endeavor to give protection, but that they could not convoy our trains through town.

Q. Did you later, after receiving that wire, have a conversation with either the chief of police or mayor with

reference to that?

A. No, I did not.

Q. In El Paso? A. No. I did not.

Q. Did someone else?

A. Yes, sir. I would explain some of these towns would like to help if they could, but they were short, they didn't have the men to do it.

Q. Did you or not receive any assistance in any of these villages or cities or towns where the testimony in this case indicates that violence was done to your trains?

A. Not where there was any violence, no, sir.

Q. Did you have any conversation with the sheriff of Peoria County, or his deputy, with reference to furnishing aid, in addition to what you have already stated?

Mr. Knoblock: Just a minute! I object. The sheriff of Peoria County testified, and his testimony is the best

evidence.

The Court: He has testified. I think this man has a right to testify to the conversation.

A. I would say the same thing he did.

Q. Say it!

A. I called them up one of the early days of the 1057 strike, and he said there wasn't much they could do, that they would do what they could, but that he had a lot of territory to cover. When I sent him the wire on January 2, he made no response to that.

Q. Was any assistance furnished, so far as you know?

A. No, sir.

Q. Mr. McNear, can you tell the court with reference to the embargo on freight, why it was put on and when?

A. Late in the afternoon of December 6 we received word from the National Mediation Board that they had been advised by these Brotherhoods that there would be a strike on our railroad effective 11 A. M., Tuesday morning, December 9. At that time we were handling a very fairly large volume of traffic. A considerable proportion of that traffic was what we call "perishable traffic". It goes on guaranteed schedules, substantial claims have to be paid in the event there is any delay, and also that is for loss of market, and, of course, also we would be liable if, by reason of such delay, there was any deterioration in the commodities that we were handling. We were also handling a considerable amount of other traffic that was moving on what we might call "expedited schedules". We realized that this strike was coming on us on very short notice, and we felt that the best way to protect the shippers' interests was to clear our railroad immediately of all traffic so that, when this strike hour arrived at 11 o'clock Tuesday morning, there would be no cars on the railroad that would be delayed because we had no other organization, no plans made, nothing done to handle traffic after that hour.

Q. Is that the reason you put the embargo on?

1058 A. Yes, sir.

Q. And then did that embargo remain on from that time on, or was there a change in the situation, without

stating the details?

A. On the morning of December 8, as I recall, about noon, we received word from the National Mediation Board that they had requested these Brotherhoods to postpone the strike.

Mr. Knoblock: I object to the words "these Brother-hoods". I think he should designate which they were.

Q. Which ones?

A. The Brotherhood of Railroad Trainmen. I don't believe that wire said "the Brotherhoods". I believe that it said "employees", that they requested the employees not to go out on strike. I think that is the way it was, that they requested the employees not to go out on strike,—

Q. All right!

A. —and when we received that wire, we amended the embargo so as to handle traffic loaded on our line and coming to points on our line, except perishables and live-stock.

Q. All right! And then when was the embargo—Was the embargo put on again, or does that remain to the present date?

A. No, that embargo has remained substantially as it was first put on since that time.

Q. Since it was amended?

A. Yes. We thought for a moment there, if there was going to be a real—

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

Mr. Heyl: All right!

1059 Q. Now, before this strike, Mr. McNear, how many trains did your railroad operate regularly a day?

A. Well, I don't keep track of the trains, sir. I don't know. I think there were—I can tell by referring to some 'papers I have here.

Mr. Heyl: I will ask someone else. I won't bother you

with it.

Q. Is there any reason why the embargo has not been

released or removed?

A. The embargo would have been lifted some little time ago had it not been for all this violence and interference with our operations.

Q. Is that the reason the embargo has been kept up?
A. Up to this time, yes. We hope, if this present situ-

ation continues, to lift it within a few days.

Q. Has there been any violence since the restraining order was issued Saturday, January 3, 1942, that you know of?

A. None, with the exception of the little incident over at the P. & P. U. junction.

.Q. And are you operating your trains now?

A. Yes, sir.

Mr. Heyl: I think you may cross-examine.

Cross-Examination by Mr. Knoblock.

Q. Mr. McNear, I understood you to say that prior to December 29, 1941, your road had hired no extra guards other than the three regular ones that you had on duty.

A. It's my information about it.

1060 Q. You would know, wouldn't you? You were the one that would give authority to hire?

A. Oh, yes. If any additional special agent was to be hired, usually they would get an authorization from me, yes, sir.

Q. And then you say you got in touch with Mr. Kipling

about the 28th, and told him to start hiring some extraguards?

A. Well, I think I told him that he had better put on

a few more men.

Q. Well, on the 28th there hadn't been any violence

then, and there?

A. There had been some threats, as I testified, that if the strike went into effect, that nobody would be alive when a train got to the Illinois River bridge, there would be no train that would ever get to the Illinois River bridge.

Q. Mr. McNear, I asked you this: There had been no

violence on the 28th?

A. No. There had been threats of violence.

Q. I asked you if there had been any violence?

A. Oh, no.

Q. Isn't it a fact that on December 12, 1941, you were in Washington, D. C.?

A. Yes, I think that was the day.

Q. And isn't it further a fact that you there met with representatives of labor with reference to mediating your problems?

A. No, the Mediation Board officials distinctly told use

that they were not mediating the dispute at that time.

Q. Well, isn't it a fact you were there in connection with your problems, however?

A. We were there at the invitation of the Mediation

Board.

Q. I see. And isn't it further a fact that on that 1061 date of December 12, 1941, that you sent a telegram

to your chief special agent, Kipling, as early as December 12, instructing him already at that time to hire extra guards?

A. I don't recall that.

Q. You wouldn't deny that you sent that telegram, would you?

Mr. Heyl: Let's see the telegram if there is such a telegram.

Mr. Knoblock: 'Kipling should have it.

The Court: Yes.

A. I don't believe I have ever sent a wire to Mr. Kipling in my life, don't think I have ever sent a wire to him.

Q. You say you had a light put up on December 30, 1941, near the head of the lane, is that correct?

A. Yes, sir.

Q. Now, you don't know how that light was working there actually of your own knowledge? You only know what instructions you gave, is that right?

A. Well, I saw it lit. Q. When? What day?

A. On Tuesday afternoon, and when we heard the report of this assault, we could look up there and see these men.

Q. You saw it lit there on this Tuesday evening, is

that right?

A. Yes, sir.

Q. And how was it shining at that time?

A. Well, a good bit of the light was shining down the lane. As I tried to explain, it was a powerful light, and we didn't want it to shine out into the highway to the extent it would blind passing motorists.

. Later on the focus of that light was shifted, was

it not?

1062 A. I don't know about that, sir. Q. You didn't watch that closely?

A. Oh, no.

Q. On Tuesday, 4 P. M.,—I assume that is the 30th, is that right?

A. Yes.

Q.—you saw John Feuger with a table leg, and you asked him why he carried that table leg, that there was no need for that, is that correct?

A. That's right.

Q. Well, John Feuger joked there and laughed with you and conversed with you on that occasion, didn't he?

A. We had a fairly long conversation.

Q. And a jolly conversation? There was no bitter-

ness in it, was there?

A. I think a part of the time (if you know John Feuger, he's a great fellow, he's an Irishman) he was a little exercised part of the time, and part of the time he was jovial.

Q. He never threatened you with that club in any way?

A. He didn't threaten me, no, sir.

Q. A part of the time he was exercised about—Was it because it was pretty cold, and he wanted some coal?

A. Yes, he was cold.

- Q. And he said, "George, why don't you send us some coal?"
 - A. That's right.

Q. And you said, "Maybe I will do that"?

A. That's right.

Q. He wasn't mad enough at you to refrain from asking for coal from you, was he?

1063 - A. Oh, no.

Q. Now, then, you say sometime later that evening a man by the name of Merrill was involved in a dispute at the head of that lane. You didn't see anything about what happened down there?

A. I didn't understand there was any dispute.

Q. We will say he was involved in an occurrence down there.

A. Yes, he was assaulted.

Q. You don't know that? You didn't see that?

A. I saw him after it happened. He was pretty badly hurt.

Q. You don't know just how that happened, though, 'do you!

A. Well, I know Mr. Merrill.

Q. You don't know how it happened? I imagine you do know Mr. Merrill, but you don't know how that happened, do you?

A. No, not the actual thing.

Q. You weren't there?

A. No.

Q. You never got any further than a third of the way down the lane,—

A. That's right.

Q. —and then you went back? Now, then, you called the East Peoria police about this occurrence, is that correct?

A. Yes, sir.

Q. And through your efforts there were several men arrested, is that true?

A. Well, I wouldn't say it was through my efforts. I

would say it was through their efforts.

Q. Well, I mean the request for the arrest came through your efforts?

A. Oh, yes, naturally.

Q. And the East Peoria police performed that task, didn't they?

1064 A. Well, I don't know as to that. I understand they arrested them. I wasn't there. I didn't see that part of it.

Q. Was your attorney there?

A. I think there was an attorney there.

Q. You said you had arranged with an attorney. You said you arranged with your attorney.

A. Yes, I think he was there.

Q. Who was that?

- A. I don't know his name. I really don't know his name, whether he came from Mr. Elliott's office or Mr. Heyl's office; one of the young attorneys from one of those offices.
- Q. And it was through one of those offices legal services were rendered on that occasion?

A. Yes, whatever was done.

Q. And these men that were reported as a result of that trouble with Merrill were caused to be arrested, and then they gave bond for their release, didn't they?

A. I don't know about that, sir.

Q. And if they did give bond, that is a perfectly legal and proper method to secure a release?

Mr. Heyl: I object. I don't think the witness should

pass on that.

Mr. Knoblock: We will withdraw the question.

The Court: All right!

Q. And then on the 31st of December, 1941, which was on Wednesday, you telephoned to Mr. Donahue and conversed with him?

A. Yes, sir.

Q. And you requested a deputy at the head of the lane on twenty-four hour duty?

A. Yes, sir.

Q. And he agreed to do it?

A. He said at that time he would try to.

Q. And, as far as you know, a deputy was placed on duty there?

A. Yes, sir, he was placed there later that morning.

Q. Not only the deputy was there, but you had one of your special guards out there all the time?

A. We had a man there, yes, sir.

· Q. He was one of your special agents, wasn't he?

A. Yes.

Q. Did any one of your special agents ever report to you they couldn't handle the situation there at the end of the lane?

A. Of course, these agents don't report to me, you understand. I don't hear everything that goes on.

Q. Was it ever brought to your attention by anyone?

A. My recollection as to that is that the special agent, one man up there, under orders not to use any firearms or do anything, might as well not have been there.

Q. That is just your opinion, is that right?

Mr. Heyl: You asked him for a report, and he gave

it to you.

But, as far as you know, did any one of your special agents even go out and ask them to refrain from doing anything they did?

A. I don't know, sir.

Now, the telegram— Let me see those telegrams. if you will, that you sent to these various county sheriffs and city officials.

(Witness complies.)

Where are some of the replies?

There they are (indicating). 1066

Q. Do you mind if I take them down to the table!

Oh, no, no. Take them away.

The Court: I think we will be at recess for about ten minutes.

(Recess.)

The Court: You may proceed with the cross-examination.

Mr. McNear, with reference to these telegrams that you sent to various of these city officials and county sheriffs, I will ask you if it isn't a fact that the sheriff at Pontiac, Illinois, replied to you on January 5, 1942, in which he said that they had no funds for special deputies, and the matter would be taken up with the County Board, and that you should have a representative of your company call at his office.

Mr. Heyl: I want to object to that because January 5

was the day after the restraining order,

Mr. Knoblock: That is just what I'm getting to.

Mr. Heyl: Just a minute, until I make my objection! It was a day after the restraining order was issued, and it is immaterial what he said at that time.

The Court: I think he may answer. He may see the telegram, unless he doesn't desire to see it.

A. I would rather take a look at it. (Witness examines

same.) Well, he says they have no funds.

And they would take it up with the County Board, and to have a representative of your company present, isn't that true!

A. Yes.

Mr. Heyl: I want to object to that because, if the court please, the County Board doesn't meet until in February under the statute of that county, so it is immaterial what he said in that telegram.

The Court: He answered.

A. I took it these telegrams were polite-Mr. Knoblock: There is no question pending.

Q. This statement to you from the sheriff of Pontiac, Illinois, he would have to take it up with the County Board, did not come until two days after you had applied to this court for a restraining order, isn't that true?

Mr. Heyl: I object; immaterial when it arrived.

Mr. Knoblock: He made representations to this court-The Court: He may answer.

A. It arrived January 5, 12:45 P. M. Q. That was two days after you appli That was two days after you applied here for this restraining order?

The answer came on-

The objection is sustained to that,

The answer came. It isn't when I sent the wire.

Now, in reference to the reply that you received from the sheriff of Livingston County, the Sheriff of Livingston County wrote you a letter on January 3, which I assume you did not receive until the 5th, stating that he had sent a copy of your letter to the chairman of their County Board, and would await his instructions, isn't that true?

A. Is that the same county?

It's Livingston County.

A. Well, he sent me at the same time a copy of 1068 a letter in which he said that he had talked with me on the telephone, and informed me he had no funds to handle such a proposition, but that if I would pay the bill he would put on some special deputies. That's what this letter says.

Q. I refer to this letter here (pointing). I am referring

directly to that letter there.

A. He says to me in his letter of January 3- He says, "I am enclosing a copy of a letter I sent to Mr. Koopman."

Q. Now, I am not interested in the copy of the letter.

I am interested in the original letter he sent you.

The Court: What is the question! (Question read by reporter.)

The Court: That's in the letter, isn't it?

A. Yes, he said he was awaiting his instructions.

Q. And he did not refuse to cooperate or to give you whatever protection was available, did he?

A. That isn't what the-

Mr. Heyl: I object.

The Court: Objection sustained.

Mr. Heyl: Asking for a conclusion.

I therefore ask to have his answer stricken.

The Court: It may be stricken.

Q. The sheriff in no way refused to cooperate in that way?

Mr. Heyl: I object. The letter is the best evidence.

The Court: Sustained. The letter is the best evidence. Mr. Knoblock: Are you putting it in evidence?

Mr. Heyl: I am objecting to your question.

69 I am not on the stand.

Q. The statement I read from the letter is true and correct, isn't that right?

A. It isn't the whole letter. It doesn't tell the whole story. The whole story is on the carbon copy which is

atached to that letter and is a part of that letter.

Q. The telegram you received from Joseph Schneider, sheriff of Woodford County, advised that protection would be given, and to advise when the men were needed and where!

A. May I see that, please? (Witness examines same.) Yes, Woodford County is the one county that told us they would give us the protection that we wanted, yes, sir.

Q. Then on January 2, 1942, the sheriff, Clarence P. or G. Paulsgrove, sheriff of McDonough County, sent you a telegram that he was willing to furnish protection as outlined in your telegram of January 2, 1942, upon condition that you furnish the men that he could deputize them, but that he had no funds with which to pay them, is that right!

A. That wasn't giving us the protection we had asked for. He says if we pay the bill that he might do some

things.

Q. He would deputize your men, is that right?

A. At our expense.

Q. At your expense? I mean if you wanted to pay these men.

A. I don't call that giving us protection. Mr. Knoblock: I move that be stricken.

Mr. Heyl: You asked him that.

The Court: It may stand. Go ahead!

Q. Then on January 2 you received a letter from Sheriff Walter Nierstheimer of McLean County, in which 1070 he also agreed to furnish reliable special deputies at your expense, isn't that true?

Mr. Heyl: Ask him what's in the telegram,-

Mr. Knoblock: That's what's in there.

Mr. Heyl: -not your construction.

A. Mr. Nierstheimer says: "Do not have large enough force or funds to employ more but can furnish reliable special deputies at your expense." I didn't consider that giving us any protection.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes, it may be stricken. That is what the telegram says?

A. Yes, sir.

The Court: Go ahead!

And on January 2, 1942, didn't the sheriff of Iroquois County from Watseka, Illinois, send you a wire, and said in substance: 'Do not have funds'?

Mr. Heyl: I object to the substance.

Mr. Knoblock: I will read the wire (reading):

"Do not have funds to convoy trains. Will use all means to prevent crime and will make arrests if crime is committed."

A. That's what the wire says, yes, sir.

Q. Did you consider that sufficient protection?

A. Well, we had had an experience in Tazewell County

it didn't do any good to arrest people.

Q. I see. You felt that the only protection that would be adequate was to at all times convoy your trains, is that right?

A. The thing we wanted protection on particularly was the moving train, and the only way that you can 1071 protect a moving train is to have somebody with

some authority ride that train.

Q. Then it was your purpose, as I see it, to secure the guarantee from every sheriff of every county throughout which you operated to convoy your trains from one end of the road to the other?

Mr. Heyl? I object to the form of the question.

The Court: I think he may answer that.

Mr. Heyl: If he understands it.

The Court: Read it!

(Question read by reporter.)

A. We didn't ask for any guarantee. We merely asked that the authorities, that is, the public authorities, ride our trains and give us protection, because they were protecting a moving train. That was what we wanted protection on.

Q. With reference to the telegram that you received on January 3, 1942, from Mayor Otto Brauns, Mayor of the City of Peoria—East Peoria—I will ask you if that telegram isn't in effect: "In reply to your telegram of January 2, 1942, please be advised that we have adequate police force for protection of all property within our city limits. We realize at this time your company is having labor trouble and our police force will do everything possible to maintain law and order but we can not assign our police force to convoy trains through the city"? Was that received by you from Mayor Brauns?

A. I received such a wire, yes, sir.

Q. And the City of East Peoria was one of the places where you were receiving most of your trouble, isn't that right?

A. And practically no protection of any kind.
Q. You received this telegram from the mayor?

A. And the next day the chief of police said the 1072 mayor had no right sending such a wire.

Q. The chief of police, in your judgment, is over

the mayor?

A. He evidently knew more about it than the mayor did.

Q. Then on January 2, 1942, did you receive a telegram from Mayor W. E. Froelich from the Village of Gridley: "Wire received. Gridley will cooperate and do all within our power to preserve law and order in our municipality!"

A. But he doesn't answer the question, sir.

Q. Wait a minute! Did you receive that telegram?

A. Yes, but he doesn't answer the question.

Mr. Knoblock: I move the latter part be stricken.

The Court: Yes. The question is, Did you receive that telegram?

A. Yes, sir.

Q. Did you receive a wire on January 2 from Mayor H. W. Bradshaw of Watseka, Illinois: "Will be glad to cooperate any way possible. Notify police on duty"!

A. Yes, sir.

Q. Did you receive a wire on January 2 from Mayor Albert Mulder from the City of Gilman, Illinois: "Will give all protection possible"?

A. Yes, sir.

Q. On January 2, 1942, did you receive this telegram from Dr. Bert Roan, mayor of Bushnell. "Your telegram requesting protection for trains running through Bushnell received. We will accord your road protection any other property owner receives in our city. No report of violence or destruction of property in our city has been reported to

me now. However, if such a thing should happen the 1073 perpetraters will be dealt with according to law and

will be arrested and confined to our jail the same as any other criminal. We will be pleased to act immediately on any report of violence or sabotage but see no reason to hire an army, to convoy your trains through Bushnell until such time arrives that acts of sabotage are actually committed"?

A. Yes, sir.

Q. That telegram was received?

A. Yes, sir.

Q. Did you receive, on January 2, 1942, the following telegram from the mayor of Hamilton, Illinois, Fred Twesten: "Will give you all possible protection. Notify us when trains arrive and leave"?

A. Yes, sir.

Q. Did you, on January 3, 1942, receive the following telegram from Joseph Dietz, mayor of the City of Chatsworth, Illinois: "I am telegraphing you to let you know that I have received your telegram and tell you that we have given our night and day policemen instructions to be especially watchful concerning your property in the village and to question all persons of suspicious appearance concerning their business and to get them moving on out of town or telephone the sheriff's office if he deems aid from the sheriff is necessary. You should get in touch with the sheriff's office and ask them to cooperate. We have no funds or men available to assist your trainmen in convoying your trains through the village and I don't think we would have any right to expend money along that line"?

A. Yes, sir.

Q. Well, now, Mr. McNear, as I understand it, on December 31, 1941, you went over to Swords' Siding in East
Peoria, is that true?

1074 A. That afternoon, yes. Q. About what time?

A. Oh, I think it was at about 3:30.

Q. And, as I understand it, when you arrived there you didn't see any of the strikers around?

A. No, sir.

Q. Then it may well have been, might it not, that the East Peovia police force and arrived and gone on when they tound no disturbance around?

A. Nobody told me anything about the East Peoria

told me had the East Peoria police arrived.

Q. And that is the only basis upon which you base your judgment that the East Peoria police never arrived on that occasion?

A. No, it is not. The newspapers the following day said the East Peoria police did not arrive until after our engine had left the scene.

Q. You consider that, then, the other basis upon which

you reached your opinion?

A. The fact that the train crew didn't tell me about it, and the fact that I read it in the newspapers the following day, and the fact that I didn't see them myself.

Q. I see. And the incident that occurred there occurred at approximately a quarter of 3 or 3 o'clock, did it not?

A. Well, if it did occur that early, then I was over there within fifteen minutes after the first report came in, as I remember.

Q. Now, did I understand you to say that when you got back over there you say Mr. Heilman?

A. Yes.

1075 Q. Were you present in court when Mr. Heilman testified?

A. Yes.

Q. I will ask you to recall as to whether or not he stated that he had gone on to the City of Peoria in the car of a Mr. Callender, and had gone to the T. P. & W. Union Station immediately following this occurrence.

Mr. Heyl: I object to what somebody else testified.

The Court: Yes, objection sustained.

Mr. Knoblock: I am just asking him to recall that tes-

timony.

The Court: No, objection sustained. We can't rehearse the testimony. If it is contradictory, of course you have a right to take advantage of that.

Q. You say you saw a green car following the train after you started back toward Peoria, and there was a man in there with an angry look on his face, is that right?

A. Yes, sir.

Q. And somebody made a scab sign, is that right, and the lady had a baseball bat? Were you put in any fear of bodily harm by that lady with the baseball bat?

A. Well, not in that instance, but I didn't know what was

going to happen when we got across the bridge.

Q. You were not fearful that this lady with the baseball bat would attempt any violence upon you, were you, or your

train crew?

- A. Oh, no. I thought she was giving me a little idea of what was going to happen. She wasn't directing it necessarily at me. I think it was at everybody that was on the crew there.
 - Q. I see. And how long did you see that lady that day?

1076 . A. You mean as we went along?

Q. Yes.

A. Oh, I guess about a minute.

Q. Had you ever seen her before?

A. No.

Q. You were able to identify her as Mrs. Delmar Newdigate here in court the other day, is that right?

A. Yes, I saw her in court; yes,

Q. No one else on the train knew her but you, is that right?

Mr. Heyl: I object as asking the witness for a conclusion.

The Court: Sustained.

Q. Then on the same evening of the 31st at about 5 P. M. you went through the picket line twice on the lane leading from your roundhouse to Route number 24, didn't you?

A. Yes.

Q. And coming out, the pickets made a way and opened up and let you through?

A: I wouldn't say they did entirely, no.

Q. Did I misunderstand you on direct examination? I understood you to say they opened up and let a way out?

A. The pickets nearest me did, yes, but it is like running a gauntlet. As I got through, there was a shape at the end who stood right in front of the radiator.

Q. He didn't harm your car in any way, did he?

A. I don't believe he caused any damage to the car, no, sir.

Q. And on January 1, 1942, I understood you to say that your special agent, Kipling, telephoned you and said that he

was losing his special agents because, being local men, 1077 they couldn't stand the abuse and couldn't go ahead with their work because they couldn't use their guns, is that right?

A. Well, in the first place I telephoned Mr. Kipling, if

that makes any difference. Q. I think that's right.

A. But what you said is just about what I testified, that these men were sort of defenseless. Here you are, you have got people standing—

Mr. Knoblock: Just a minute.

Mr. Heyl: Let him answer, and you can strike it if it isn't proper.

The Court: Read the question.

(Two preceding questions and answers read by reporter.)
The Court: That part of the answer may be stricken as
to whether the conversation related by counsel is correct.

Q. After telephoning Mr. Kipling on January 1, 1942, to that effect, as I understand it you again instructed Mr. Kipling the special agents or guards were not to use their guns!

A. That's right.

Q. But some of them did use their guns on the morning of January 2, 1942?

A. That's what I understand.

Q. Now, you mentioned a man by the name of Goldby?

A. Yes, sir.

Q. And he was here in Peoria, and then he came back on the 4th of January?

A. No. So far as I know, when he arrived here on the evening of the 1st, I think he was here right along, as 1078 far as I know. I didn't see him all the time. He may

have gone out of town. .

Q. Didn't he state to you that he couldn't get enough local men, and suggested going into Chicago, and that he did, and they came in—

A. I think he sent one of his men to Chicago for the help.

Q. I see. And he reported to you that Mr. Coyle had a man named Red working for him, is that right?

A. That's what he told me.

Q. And he placed no further designation on him except "a man named Red"?

A. That's right.

Q. Now, I will ask you if you or any of the authorities on your road at any time have ever asked aid of the sheriff of Peoria County or Tazewell County to ever make an arrest as a result of any acts of violence that you have complained of, and they have failed to respond?

Mr. Heyl: I object. That is immaterial. That isn't the

test.

The Court: He may answer.

Mr. Heyl: Not to do anything until after the act is done-

The Court: He may answer.

A. Well, I did, as I have said, ask to have the people complained of in the Merrill incident arrested.

Q. They were arrested, weren't they?

A. So far as I know, yes, sir.

Q. You never asked any time the arrest of any other, men?

A. But when Sheriff-

Q. Wait a minute. You have never asked for the 1079 arrest of any other men, and the sheriff hasn't complied with the request?

A. I was informed it would be useless,

Mr. Knoblock: I submit that isn't an answer.

The Court: I think you should answer whether the sheriff refused.

A. No, I can't say that. As a matter of fact, I don't have to do with arresting people. I did happen to be there at that particular time that Tuesday evening, but I don't remember the special agents' department or these other departments that would handle that business—

Q. And you never have— You never have— You never asked the sheriffs of either Tazewell or Peoria County to dispatch a detail at a point of disturbance, and have them

refuse your request, have you?

Mr. Hevl: I think that's too general, and I am going to object to it. It is not proper.

The Court: Read the question: (Question read by reporter.)

The Court: I think he may answer that, whether they

refused or not.

A. Well, in the first place I sent this wire to the sheriffs about convoying our trains through town, and we knew that wherever they went they were apt to be assaulted or stoned, or something happen to them. We would never know where something was going to happen.

Mr. Knoblock: I move the answer be stricken for the

reason it is not responsive.

The Court: Go ahead and answer the question whether they refused to send a convoy at your request.

1080 A. They sent no convoy, no, sir, not at any time; not any time.

Q. I asked if they ever refused to send a detail to a point

of disturbance?

Mr. Heyl: What do you mean?

Mr. Knoblock: Cars with deputy sheriffs in them.

Q. Did they ever refuse to do it, or did they ever fail to do it?

A. For example, at the time I called up Deputy Sheriff Vespa (if that is what his title is), they never got there. We had warning that that thing was going to take place down there. They never got there.

Deputy Sheriff Vespa told you he would send a detail,

didn't he?

A. Yes, he said he would.

Q. How do you know that detail never got there?

Mr. Heyl: I want to object. The evidence in this case shows they didn't get there until it was all over.

The Court: If he knows himself, he may answer.

A. I don't know myself that they got there or didn't get there.

Q. Now, you say you called the Hanna Clinic to take care of Dilley who was shot on the morning of January 2, 1942, is that right?

A. I said I asked the Hanna Clinic to send somebody down as quickly as possible to the Proctor Hospital to do whatever they could to help Mr. Dilley.

Q. Mr. Dilley, however, has his own private physician,

who happens to be Dr. Fred Stiers?

A. So Dr. Burroughs told me after he returned.

Q. Dr. Burroughs performed no service?

A. Dr. Burroughs told me no services were neces-

1081 sary, the injuries were very slight.

Q. It could not—But could it be that you sent Dr. Burroughs down there to secure information which might be useful to you later in a defense case in case Dilley sought to sue you for personal injuries and damages?

Mr. Heyl: I want to object to that question for the reason it isn't an intelligent question, and it is improper

cross-examination.

The Court: I don't see any materiality, whether he did or didn't. What is the materiality to this case whether he sent a doctor, or didn't?

Mr. Knoblock: The reason I went into this is, I received

the intimation on direct examination it was a magnanimous gesture to take care of Dilley.

Q. You also sent your claim adjuster down there to in-

terview Dilley, didn't you?

A. It is the policy of our railroad, whenever anybody gets hurt, anybody is hurt around the railroad, to render whatever medical assistance we can, whoever is hurt.

The Court: The question is, Did you send the claim adjuster down? That is the question before you.

A. I don't recall about that, sir.

Q. Did you regard Dilley as an employee on January 2? Mr. Heyl: I object. That is immaterial.

The Court: I think that may be sustained.

The two Brotherhoods in this case, Mr. McNear, representing your striking employees have agreed to arbitrate these problems that arise through—on the basis 1082 of this dispute, isn't that right?

Mr. Hevl: I object as not proper cross-examina-

tion, and immaterial.

The Court: Objection sustained. I don't see how we can go into that question of the right and wrong. Fortunately, or unfortunately, I can't pass on that.

Objection sustained.

Q. You have refused to arbitrate these problems? Mr. Heyl: I object to that for the same reason.

The Court: Sustained. That isn't the question before

Mr. Knoblock: I think that's all.

The Court: Anything further with this witness?

Mr. Hevl: That's all.

The Court: Call the next witness.

(Discussion off the record.)

Mr. Knoblock: At this time I wish to make a statement in the record, and make it as an offer of proof, that the plaintiff in this case, through a verified complaint, sworn to by George P. McNear, Jr., president of the plaintiff, has alleged that he has acted in this matter in good faith. and that he has used all reasonable means and efforts to dispose of the matter in an amicable manner, and that we. offer to show that the two Brotherhoods here representing the striking employees hace, to the National Mediation Board, given their consent to arbitrate all of these problems, and to be bound by the findings of that arbitration board, and that the plaintiff be bound likewise.

1083 We further offer to prove the sending of two telegrams to the president of the plaintiff, George P. McNear, Jr., one of which telegrams was sent by the National Mediation Board, substantially as follows: "Acknowledging—"

Mr. Heyl: I object to trying to put evidence in by an offer. I should think he should state what he wants to ask

Mr. McNear.

Mr. Knoblock: (Reading.) "Acknowledging your telegram of even date relative to strike of train, engine and yard employees of Toledo, Peoria & Western Railroad Company set for 6 P. M. today. Mediation Board has made every reasonable effort to adjust dispute under provisions Railway Labor Act. At Board's request employees have agreed to arbitrate this controversy. This method of adjustment will provide a fair, legal and definite disposition of the matter and will avert a strike. You have it within your power therefore to prevent interruption to traffic by also agreeing to arbitrate in accordance with the spirit of the Railway Labor Act. We believe that you as an employer should appreciate the work the Board has done and welcome an opportunity to arbitrate the dispute. The National Mediation Board has done all that in its judgment it may do under provisions of law."

The Court: What is that? A telegram?

Mr. Knoblock: Yes.

The Court: Telegram from whom to whom?

Mr. Knoblock: Telegram from the National Mediation Board on December 28, 1941, to Mr. McNear. That was before the men went out on a strike.

Mr. Heyl: I want to object to it on the ground it is wholly immaterial, and does not tend to prove any issue in this case, and does not present any evidence that has any

bearing.

Section 157, paragraph 1, of the Railway Labor Act provides that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon said party by the terms of this chapter, or otherwise.

Therefore, it's immaterial whether this telegram was sent, or whether we agreed to arbitrate, because the statute itself provides that neither party is required to arbitrate,

so how could it be material?

The Court: I think that is the law, gentlemen.

If we could compel arbitration in a case of this sort,

I suppose it would have been compelled a long time ago and might have avoided the thing that is before us now but, as I understand it, there is no way you can compel arbitration and, if you can't compel arbitration, by what right could I say it is a part of this particular case?

Mr. Kneblock: I say on his allegations of good faith. The Court: How would you have good faith when a man

has a right to refuse!

Mr. Knoblock: Under Title 29, Section 108, we 1085 maintain this is material before he is entitled to an injunction.

The Court: What?

Mr. Knoblock: That the arbitration of this matter is necessary before an injunction.

The Court: That he is compelled to arbitrate?

Mr. Knoblock: "That no restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or has failed to make every reasonable effort to settle such dispute either by negotiation or by the aid of any available governmental machinery of mediation or voluntary arbitration." It is here.

Mr. Heyl: You don't want to get twisted on the law at the beginning, Mr. Knoblock is twisted. He read the court a statute passed in 1932 which relates to labor disputes. This case is under the National Railway Labor Act, and the statute was passed in 1934, June 21, 1934. That is what governs, not interstate rules,—the Railway Labor Act.

What he read you is the general labor law, and has no

bearing in this case.

Mr. Knoblock: For the record, what I read you is part and parcel of the Norris-LaGuardia Act. It is in the same supplement.

Mr. Heyl: But the Railway Labor Act controls inter-

state rules, and it was passed later.

The Court: I don't think we can pass upon that

1086 question. I don't see how I could.

The objection will be sustained, and the evidence will be denied.

Go ahead!

H. H. BEST, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Q. What is your name?

A. H. H. Best.

- Q. Where do you live, Mr. Best?
 - A. 627 Commonwealth, Peoria. Q. What is your age?

A. Forty-seven.

Q. What is your business or profession?

A. Superintendent of the operating department of the

T. P. & W. Railroad.

Q. I will ask you if you had a conversation with the chief of police of the City of East Peoria at any time January 1 or 2, 1942.

A. 1st or 2nd? No.

Q. When did you have a conversation?

A. January 3.

Q. At what time?

A. About 10:30 A. M.

Q. That was before the restraining order was issued?

A. That's right.

1087 Q. Before it was filed? The bill or complaint filed?
A. Yes.

Q. Where did that conversation occur?

A. I was in the trainmaster's office, and he was in his office at the City Hall.

Q. Did he call you! A. No, I called him.

Q. What did you ask him?

A. Asked him if he would afford us ample protection,-

Mr. Knoblock: I object.

A. —for our trains over the crossing at East Peoria, that Superintendent Umshler of the P. & P. U. had just phoned me,—

Mr. Knoblock: I object.

Mr. Heyl: This is a conversation with the chief.

He is telling what Umshler told him.

The Court: This is a conversation with the chief?

A. That is right.

The Court: State what was said.

A. That Superintendent Umshler of the P. & P. U. said

that he had a cut ready to come to us, asking if we had protection. I told him I was going to call Chief Wright.

Mr. Knoblock: I object as improper.

Mr. Heyl: This is his conversation with the chief.

Mr. Knoblock: He didn't tell the chief he was going to call Umshler.

A. Yes, I did.

Mr. Heyl: You weren't there. He was there.

A. Superintendent Umshler asked me if we had 1088 ample protection, and I said no, that I was going to call Chief of Police Wright and find out from him, and that Mr. McNear informed me Mayor Brauns said we would have ample protection. Chief Wright told me he could not guarantee us ample protection, that they had trouble with the C. B. & Q. delivery the day before, which was January 2, and that two men had no show with forty or fifty pickets, that Mayor Brauns should not have notified Mr. McNear that he would be able to give ample protection, that he himself wouldn't do it, and he wouldn't ask his two men to do it because of the size of the crowd.

Q. Is that all he said?

Yes.

Q. Do you know how many men the chief had?

A. He told me two.

Q. What is the size, approximately, of the City of East Peoria?

A. I don't know.

Q. How many miles east and west in the city?

A. Probably three miles east and west.

Q. And how far north and south?

A. Two miles; a mile and a half or two miles.

Q. Any other railroads that pass through the Village of East Peoria?

A. Nickel Plate.

Q. Any other road?

A. Pennsylvania operates over the Nickel Plate track.

Q. How about the P. & P. U.? A. They are in East Peoria.

Q. And how about the Illinois Terminal?

A. That's right. They do, too.

Q. Any other railroads?

1089 A. Illinois Central.

Q. Did the City of East Peoria ever afford any police protection to your trains?

A. No, sir.

Q. Or to your property?

A. No. sir.

Q. Was there ever an officer ever appeared at any time in the yards or any other place when there was any disturbance f

A. Not that I know of.

Mr. Heyl: Cross-examine!

Cross-Examination by Mr. Knoblock.

Q. Do you know of your own knowledge who is the chief officer of East Peoria? Mayor Brauns or Chief of Police Wright?

A. Chief of Police Wright, in my estimation, as far as

I know.

Q. Is above and has more authority than Mayor Brauns! A. . I don't know.

Mr. Heyl: I object to that as a legal question. Mr. Knoblock: I asked according to his opinion.

Q. And you say that you don't ever recall when the East Peoria police ever responded to a call on a disturbance?

Only when Zeke Merrill was injured.

Q. You have heard of that incident over there?

A. I understood Mr. Heyl in the movement of trains-Q. You meant that you never knew of them convoying your trains, is that it?

Any protection to any train whatever.

Q. I am asking about convoying your trains.

- A. No, I have never known of them convoying 1090 our trains.
- Q. You never knew any time when the City of East Peoria police refused to respond at the scene of a disturbance, do you?

A. Failed to respond? Q. Yes.

Q.

A. I do not.

The fact of the matter is, about the only thing you gentlemen asked them to do is convoy your trains, which they refused to do?

I did not ask for them to convoy trains. I asked

for them to keep the crossings clear.

This was on January 3, 1942, that you had that conversation with him, and at that time your company had about twenty-nine special agents in their employ, didn't they?

A. Possibly.

Q. Did you attempt to make the delivery with the protection of any of your special agents?

A. No, we didn't have enough special agents.

Q. You didn't have enough?

A. That's right.

Q. In your judgment, twenty-nine special agents could not handle a crowd of forty or fifty pickets, is that right?

A. We did not have the twenty-nine special agents in

one spot.

Q. There were occasions when you had as high as eight in one spot?

A. No, not that I know of.

Q. You didn't know about that train going west south of the Allied Mills?

A. I wasn't present, and I don't know that eight special agents were in one spot.

1091 Mr. Knoblock: I see. I think that is all.

Mr. Heyl: I want to ask this witness another question which should be direct.

The Court: All right.

Further Direct Examination by Mr. Heyl.

Q. Mr. Best, do you know about how many employees the Toledo, Peoría & Western had on December 28, 1941, in the entire road? Approximately how many?

A. No, I do not.

Q. Now, this C. B. & Q. train that you referred to that was stopped, it was stopped how far from the front door of the City Hall of the City of East Peoria?

A. I was not there, Mr. Heyl. That was on January 2.

I was in our yard.

Q. How far would the Main Street crossing be?

A. About a block.

Mr. Knoblock: I object; immaterial if he doesn't know where the train stopped.

A. Main Street crossing is about a block. Where we

cross Main Street crossing is about a block,

Q. From the City Hall in the Village of East Peeria?

A. That's right.

Mr. Heyl: I want to recall Mr. McNear for one question.

1092 GEORGE P. McNEAR, JR., recalled, having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Mr. McNear, can you tell the court the approximate number of employees that the T. P. & W. had in its system on December 28, 1941?

A. I don't recall at the moment, but I think somewhere

Q. How many employees were in the two Brotherhoods at the time this strike was called, approximately?

How many were in the Brotherhoods?

How many were working for you that were members of the Brotherhoods that called the strike?

I don't know how many were in the Brotherhoods. I know how many people were in that branch of service.

Give us that.

Something less than one hundred; somewhere around one hundred.

And the rest of the employees are not on strike, are they?

A. No. sir.

Can you give the court the approximate value of the property that's described in the investment described in the complaint in this case?

Just a minute. You asked for value.

Approximate value of the investment as of the.

date of this strike, or approximately that date.

A. Well, the investment in our road and equipment, miscellaneous physical equipment, was approximately 1093 \$4,600,000.00. In addition to that, we had a certain amount of working capital of about \$800,000.00.

I am talking about the property.

The physical property is about \$4,600,000.00.

Would that be approximately the value as of the date this strike was called.

The Illinois State Tax Commission thinks that the value is considerably more than that.

Was that approximately the value at the date you have given? The date of this strike, in your opinion?

Well, when you begin to talk about value, you have to define whether it's so-called reproduction value or commercial value or taxed value or some other kind of value.

What is shown by your annual report?
That is our book figure, which represents the cost at the foreclosure sale in 1926, plus additions and less retirements since that date. At the time of the foreclosure sale, the property was written down to about ten cents on the dollar.

And the figure that you have given would be the replacement value as of the date of the strike, approxi-

Oh, no, the replacement value would be up around

\$9,000,000.00.

Q. Now, will you tell the court what the annual payroll is, say for the year prior to this strike? Approximately?

A. The payroll was around a million a year.

Mr. Heyl: I think that's all. The Court: Cross examine.

Cross-Examination by Mr. Knoblock. 1094

Q. Mr. McNear, you have given us some of the financial structure here of your company. I will ask you who owns the common stock of the Toledo, Peoria & Western Railroad.

Mr. Hevl: I object as immaterial.

Mr. Knoblock: You brought out the financial structure.

The Court: I think he many answer.

A. Railroad Securities Corporation. As of today's date?

The Court: I suppose.

Yes.

Railroad Securities Corporation.

And who owns that corporation or the stock of that corporation?

Mr. Heyl: I object to that as immaterial.

The Court: I don't see much materiality, but if its for the purpose of trying to test the credibility of this witness: -I don't see any reason for either one of them.

Mr. Heyl: The purpose is to show the value.

Mr. Knoblock: You went into it. I think I have the right to cross examine.

The Court: I think he can answer. I don't see what

difference it would make.

Q. What is the Prairie Schooner Company, a corporation !

The Court: What is that? Mr. Heyl: I object to it as immaterial.

Mr. Knoblock: It has to do with this railroad.

The Court: We are going back in history.

Mr. Knoblock: This is current American history today. Mr. Heyl: Back to '49.

The Court: Has that anything to do with this 1095 railroad?

Mr. Knoblock: It has to do with its financial structure.

The Court: He may answer.

The Prairie Schooner Company was a holding company which owned all of the stock of the railroad in the year—prior to some date in December, 1941, and prior to that date, going back for several years.

Q. And who are the directors of that corporation as compared to the directors of your present corporation.

known as the T. P. & W.?

Mr. Heyl: Tobject as immaterial.

The Court: Yes, it is immaterial. Objection sustained Q.—In the year 1940, what was the percentage of dividends on par value stock of your company?

Mr. Heyl: Objected to as immaterial.

Mr. Knoblock: You told what a big corporation it was, how much they owned, how many people they employed.

The Court: I think he may answer if that is for the

purpose of the value of the property.

A. You asked for the dividends paid in the year 1940!

No, percentage as compared to the value of the common stock.

A. I don't understand the question.

(Question read by reporter.)

The Court: What do you mean?

Q. I will put it this way: How many shares of common stock did you have outstanding in the year of 1941?

Mr. Hevl: Same objection.

Fifty shares. 1096.

Q. What were their par value?

A. **\$100,00.**

And how much dividends did you pay that year?

\$80,000,00.

The Court: Anything else, gentlemen? Mr. Knoblock: Just a second, please!

That's all.

Mr. Elliott: That's all.

1097 Mr. Elliott: We call this witness as an adverse witness for cross-examination.

Mr. Knoblock: Who is this man?

Mr. Elliott: He is a member of the Brotherhood of Railway Trainmen, and was testified to yesterday as keeping the records of pickets, and where they were stationed. It is for the purpose of showing that.

J. W. BURKHALTER, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to

Cross-Examination by Mr. Elliott.

Q. What is your name?

A. J. W. Burkhalter. Q. Where do you live?

A. 200 Kenwood Avenue, West Peoria.

Q. Were you formerly in the employ of the Toledo, Peoria & Western Railroad?

A., I was.

Mr. Knoblock: I further object to the proceeding under Section 60 because this man is not a defendant.

Mr. Elliott: He's not a defendant.

Mr. Heyl: He's an officer.

Mr. Knoblock: He's not an officer in any way.

Mr. Elliott: We expect to show it.

1098 The Court: Can you show he is an officer? .

Mr. Elliott: I expect to.

Mr. Heyl: It was testified by one of the defendants that he was the man that was keeping the records, and was chairman of the organization.

The Court: I will find out.

Are you'a member of the defendant organization?

A. No, sir.

The Court: You are not?

A. I am not.

The Court: Did you keep any records down there at all?

A. No, sir, only that one; just a memorandum; it isn't a record.

The Court: You're not a member of any of these orders?

A. I do not belong to the Trainmen.

The Court: Do you belong to any other organization that is a defendant?

A. No, not any Brotherhood organization I do not.

The Court: You can examine him, but I don't see how you are showing he is an adverse witness.

Q. Do you know where the headquarters of the Brother-hoods that are defendants in this case were here in Peoria?

A. I do now.

Q. Where?

A. Jefferson Hotel.

Q. Have you been over at the Jefferson Hotel since the calling of this strike?

A. Part of the time, yes.

Q. In what capacity have you been there?

A. Acting chairman.

O. Chairman of what?

A. Of the meetings.

Q. Of the meetings of the men?

A. Yes, sir.

1099

Q. Of what Brotherhood?

A. Well, supposed to be the B. of R. T., but I am not a member.

Q. But you were acting chairman of the members in their meetings over at the Jefferson Hotel?

Mr. Knoblock: I object to the leading of this witness. The Court: What question do you want to propound?

Q. As chairman, did you or not keep any memorandum or record of the pickets and places where they were assigned from day to day?

A. From day to day only.

Q. And when did you being doing that?

A. I can't recall the exact date; sometime in January.

Q. Early part of January?

A. Yes, sir.

Q. In keeping that list, did you assign or show on the list the places that the pickets were assigned to?

A. Yes, sir.

Q. Have you produced, in pursuance to the subpoena that was served on you, those records?

A. Only one I have.

Q. Have you that one here?

A. I have.

Q. Will you please produce it?

A. That's a part of my record, and part somebox's else's.

Q. Part of your record, and this is the record you 1100 have produced pursuant to the subpoena, is it?

A. Yes, sir.

Mr. Elliott: I would like to have it marked "Plaintiff's Exhibit 22".

Mr. Knoblock: I object. This man stated he was not a member of either one of these Brotherhoods, and I don't see how any records he might keep would be evidence against or for them in any way.

The Court: He did state he acted as chairman up there.

Mr. Knoblock:. Of the local men.

The Court: Evidently with their consent. I don't know whether it is material, but it seems to me, if he acted as chairman for the men, his evidence would be part of the records of the organization because they evidently had him there at least with their consent.

Q. By "the men", are you referring to the men out on

strike?

A. Yes.

Q. How did you come to be chairman of meetings of those strikers?

A. Elected by the body of men that were there.

Q. And when were you elected?

A. I believe the night or the evening of December 28.

Q. That was the evening that the strike was called, was it not?

A. Yes, sir.

Q. Where was the election held?

A. Newdigate's home.

Q. Mr. Newdigate who is sitting here back of counsel?

A. That's the gentleman.

Q. Mr. Delmar Newdigate?

1101 A. Yes, sir.

Q. And you were elected as chairman of the men at that time?

A. Yes.

Q. Have you continued to act as chairman since that time?

A. With the exception of a few days.

Q. As chairman, what were your duties?

A. Conduct the meetings, open them and close them, and various things.

Q. Did you have anything to do with the assigning of pickets?

A. Some.

Q. Who attended those meetings?

A. The men that's on strike.

Q. Did Mr. Keiser or Mr. Coyle attend any of those meetings?

A. They did.

Q. Are Mr. Keiser and Mr. Coyle sitting here at the counsel table?

A. They are.

Q. And are the men that are sitting to the left of the aisle the men that attended these meetings, some of them?

A. As near as I can see, yes.

Q. And were there in attendance other men that are sitting here in the court room? Others out on strike that attended those meetings?

A.º I can't recall any.

Q. Who was present at this meeting at Newdigate's home on the 28th of December?

Mr. Knoblock: I object to this.

The Court: Objection sustained. I don't see where that is material. You want to show certain men were pickets and, if that's material, all right. They had a right to meet.

1102 Q. Were you on duty as chairman on January 11.

A. I think not. I was on duty, but had nothing to do with any assignments.

Q. Did you have anything to do with the assignment of

pickets on January 2?

A. I can't say. I don't remember.

Q. That was the day after New Year's.

A. I believe I did.

Q. Who were present at the time you had that meeting when pickets were assigned on January 21

A. I can't say as to all that was present.

Q. Can you name some?

A. I know Brother Coyle and Brother Keiser were there. I distinctly recall that, but the others I do not know.

Q. Did they take part in the assignment of pickets?

A. No.

Q. Who selected the pickets?

A. They are selected off the seniority list.

Q. Did you make a list of the pickets each day you were chairman.

A. I did.

Q. Were those pickets assigned to various places?

A. I think so ...

Q. Do you know whether they went to the place they were assigned or not?

A. I do not.

Q. What are the records of the assignment of pickets beginning December 28, down to and including January 12, 1942?

A. I cannot say.

- Q. What, if anything, did you do with those records?
- 1103 A. I didn't keep them as any value; threw them away.

Q. You threw them away?

A. Yes, sir.

Q. How did you destroy them?

A. Wadded them up, and throwed them in the waste-basket.

Q. Is this list which is marked "Plaintiff's Exhibit 22" which you have produced the only record that you now have that has not been destroyed?

A. That record happened to be there, due to the absence of my not being at the meeting. I wasn't there at that

date.

Q. You brought this in pursuant to subpoena?.

A. I made that as a memorandum of who took my place. Q. You made this Exhibit 22 as a memorandum of who

took your place?

A. Yes, sir.

Mr. Knoblock: I object to the form of this question.

The Court: Tell what he did about it. Q. What did you do with reference—

The Court: How did you happen to make it?

A. How did I?

Q. Yes. Who made this record, Exhibit 22, that you have produced?

A. I said I made part of it.

Q. What part of it did you make?

A. That is my writing (indicating), and that is some-body else's writing, I don't know whose (indicating).

Q. The second column on the top row is your writing?

A., Yes, part of it. That isn't (indicating).

Q. Which one isn't?

A. That isn't right there (indicating). That's my 1104 writing that has been scratched off:

Q. Is the original writing of those names all in your handwriting?

MICRO CARD TRADE MARK (R)



A. They are not.

Q. Which ones are not in your handwriting?

A. That one (indicating) and that one there (indicating), that one there (indicating).

The Court: Who are they?

Q. All but seven are in your handwriting, are they?

A. And these two (indicating).

Q. All but nine are in your handwriting?

A. Yes.

Q. In whose handwriting are the nine?

Mr. Knoblock: Object as having been asked and answered.

The Court: If he knows. Do you know?

A. No.

Q. And you do not have, and have not produced in this court, the record of the pickets as assigned from December 28, 1941, up to and including January 12, 1942, have you?

A. 'No.

Q. They have been destroyed?

A. Well, I don't know as you would call it "destroyed".

They have been disposed of.

Q. You rolled them up and threw them in the waste-basket, didn't you?

A. Yes, sir.

Q. And didn't keep them?

A. No, sir.

Mr. Heyl: I want the subpoena served on this man.

The Court: I don't think there is any question.

Mr. Elliott: He was subpoenaed to bring all rec-1105 ords with reference to pickets.

The Court: He said he didn't have them.

Mr. Elliott: We offer PLAINTIFF'S EXHBIT 22.

The Court: What is it?

Mr. Elliott: List of pickets and places.

Mr. Knoblock: We object as being immaterial.

The Court: Cross examine!

Mr. Heyl: We now submit, in view of the answers of the witness, that he was elected chairman by all these Brotherhoods, that he is properly examined as an adverse witness.

The Court: He answered about all the questions. I

think you can call him adversely if you want to.

Mr. Knoblock: I don't think there is any cross examination.

Mr. Elliott: Any objection?

Mr. Knoblock: Immaterial, irrelevant, unnecessarily burdening the record, and not proving anything.

The Court: You mean prior to the time—Mr. Knoblock: That is made January 13.

Mr. Elliott: This is subsequent to the date. The record previous to the restraining order was destroyed.

The Court: This is since?

Mr. Elliott: Yes.

The Court: What is the purpose? They had a right, under that restraining order.

Mr. Elliott: We are not contending that.

The Court: What is it for?

1106 Mr. Elliott: My purpose is simply this: I asked him in the subpoena to bring in the other records, all of the records, and this is the only one he brought, saying the others had been destroyed.

The Court: There is no showing of any violation of the

restraining order.

Mr. Elliott: No, we are not contending for that.

Mr. Heyl: We ask that the records be brought in, and he brings in only one, and says the others have been destroyed.

Mr. Knoblock: What is the matter with that?

Mr. Heyl: You know what the courts have held about the destruction of records.

The Court: Is that all?

Mr.: Elliott: Yes.

The Court: It may be admitted.

1107 ROBERT G. SPRAGUE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Heyl.

Mr. Knoblock: I object to any testimony from this witness. I understand he is admitted to praceice law.

Mr. Elliott: He is not of counsel in this case.

The Court: I think that only goes to a man's credibility if he is a lawyer!

Mr. Elliott: He is not of counsel.

Mr. Knoblock: He was sitting here all the time.

The Court: He may testify.

Mr. Elliott: I stated to the court, and the court said he could.

The Court: I think it was permitted at the time. Go ahead and examine.

Q. What is your name?

A. Robert G. Sprague. Q. Where do you live?

A. 107 Edgehill Court, Peoria.

Q. What is your occupation or profession?

A. I am an attorney employed by the Toledo, Peoria & Western Railroad.

Q. In the office?

A. In the office of the railroad.

Q. You are not of counsel in this case?

A. I am not, no.

1108 Q. You are a regular employee of the railroad?

A. I am.

Q. How long have you been employed by the railroad!

A. Two years.

Q. Do you have charge in your department of the labor relations of this railroad with its employees? Is it in your department?

A. Our labor negotiations are handled by Mr. Best, the superintendent of the railroad, but I cooperate with him

in that matter.

Q. Now, have you been present at all of the meetings and negotiations between the railroad and its employees, or the representatives of the employees, since November 4, 1940!

A. I have been present at all meetings, with the exception of two or three meetings which were short meetings,

and at which very little took place.

Mr. Knoblock: I object to the latter part, and move it be stricken.

The Court: Yes, it may be stricken. If he wasn't there,

he wouldn't know.

Q. I will ask you if, prior to October 4, 1940, if your railroad had a contract with either the Brotherhood of Railway Trainmen or the Brotherhood of Locomotive Firemen and Enginemen who are defendants in this case.

Mr. Knoblock: Objected to as immaterial and irrelevant.

Mr. Heyl: It is material.

The Court: Where is the materiality?

Mr. Heyl: We have to show, Your Honor, in connection

with this complait, what was done with reference to mediation and settlement of this dispute.

109/ The Court: If you go into that, we will have to go

into all of it.

Mr. Knoblock: There will be an awful lot to be said by many witnesses.

Mr. Heyl: We are obliged to show what we did after

the election of representatives.

Mr. Knoblock: You are talking about the election of 1940?

Mr. Heyl: That is when the election was.

Mr. Knoblock: What has that to do with the case at bar?

Mr. Heyl: We have to show after the election we dealt with these representatives.

Mr. Knoblock: You say you don't have to arbitrate.

The Court: You dealt with the representatives of the two organizations?

Mr. Elliott: Yes.

The Court: I think you are entitled to show that. I thought you were going to show what they did by way of settlement.

Go ahead!

(Question read by reporter.)

The Court: You may answer "yes" or "no".

A. There has been no such contract in effect while I have been with the railroad.

Q. Were you with the railroad at that time?

A. I have been with the railroad since December of 1939.

Q. Were you with the railroad when an election was held on October 4 and 5, 1940, which election was held under the provisions of the Railway Labor Act?

A. Yes, I was.

1110 Q. Now, was there or not a representative of the National Mediation Board present to conduct that election?

A. There was.

Q. What was his name?

A. John F. Murray.

Q. Following that election, did you receive any communication from Mediator Murray with reference to the result of the election?

A. We did.

Q. Will you please produce that letter?

A. (Witness complies.)

Q. You have handed me a letter which is signed by John F. Murray, which the reporter has marked "Plaintiff's Exhibit 23". Is that the original that you received!

A. That is.

Q. With the envelope attached?

A. With the envelope in which the letter reached us.

Mr. Heyl: Now we offer in evidence, in connection with the testimony of this witness, this original letter which has been marked "PLAINTIFF'S EXHIBIT 23".

Mr. Knoblock: May I ask what is the purpose?

Mr. Heyl: And I would like to have permission, if the letter is admitted, to substitute a true copy which has also been marked by the reporter.

The Court: Submit it to counsel, and go ahead with this

witness.

Anything further with this witness?

Mr. Heyl: Yes.

The Court: Go ahead! Is there any objection to it!

1111 Mr. Knoblock: I would let them shorten it up if

they will ask him how-

The Court: If you want it admitted in evidence—and copy may be substituted if counsel is satisfied the copy is correct.

Mr. Knoblock: We want to compare it.

Q. Was there another election held of the-any other

group following that?

A. Yes, there was an election held among locomotive firemen, hostlers and hostler helpers employed by the railroad on October 5 to 7, 1940.

Q. And was that a run-off election?

A: No, that was not a run-off election. That was an original election.

Q. Was there another election held after that, or was

that the last one?

A. There was another election held on October 10 and 11, 1940, among locomotive engineers and employees of the railroad. That was not a run-off election. That was the first election among the engineers.

Q. Was there a second election among the engineers?

A. No, there was not a second election among the engineers.

Q. Were there any other elections held after that?

A. There was an election subsequently held as a run-

off election among the conductors.

Q. Now, did you receive a notice from the mediator, Murray, with reference to the election held October 5 and 6?

A. Yes, we did. Pardon me! That was October 5 to 7.

Q. And the notice is dated October 11, 1940, rela-1112 tive to the election of the locomotive engineers? A. Yes.

Q. Did you receive any other notice from Mediator

Murray with reference to any other election?

A. We received a notice from Mediator Murray dated November 28, 1940, relative to an election of road conductors held November 27 to November 28, 1940.

2. Now, was that the last notice you received from

Mediator, Murray with reference—

A. With reference to the election's result.
Q. —with reference to the representatives?

A. Yes.

Q. Who were the representatives selected?

A. I will have to refer to the report of election results. I don't have the first one I testified concerning. According to the reports given to us by Mediator Murray, the results of these elections were as follows: As to the election for road conductors, road trainmen and yard men held October 4 to 5, 1940, the conductors tied between the Association of Train Service Employees of Toledo, Peoria & Western Railroad and the Brotherhood of Railroad Trainmen. The trainmen and yard men selected the Brotherhood of Railroad Trainmen as their representative.

In the election held October 5 to 7, 1940, among locomotive firemen, hostler and hostler helpers, the Brotherhood of Locomotive Firemen and Enginemen was selected

In the election held October 10 to 11, 1940, among locomotive firemen, the Brotherhood of Locomotive Firemen and Enginemen was selected; and in the election held

November 27 to November 28, 1940, among road con-1113 ductors, this being the run-off election, the Brother-

hood of Railroad Trainmen was selected.

Q. These reports or notices of election results from John F: Murray, Mediator, National Mediation Board, in every instance, were they or not, the same as the exhibit which has been identified as Plaintiff's Exhibit 23, except

referring to the appriate election? Were they in the same form.

A. They are in similar form.

Mr. Heyl: I am not offering them because of the oral testimony so as not to encumber the record.

The Court: All right.

Q. Following receipt of the last actice or report of Mediator Murray, what did the railroad, Toledo, Peoria & Western, do with reference to meeting with representatives of these Brotherhoods who were selected in the elections

to negotiate for the men?

A. Well, if I may answer in a way that doesn't quite answer your question: Prior to the notice, last notice, and following the receipt of each notice from Mr. Murray, we served notice upon the respective Brotherhoods of our intention to change rates of pay, rules and working conditions applicable to the employees of the railroad represented by the Brotherhoods.

Q. Did or not the Brotherhoods serve similar notices

on you with reference to their position?

A. They did, with one exceptions.

Q. What's that?

A. We did not receive a notice from the Brotherhoods as to intended changes for conductors following the runoff election.

Q. But you did receive the notice of changes as to all

other employees, is that right?

1114 A. As to all other groups of employees, we did Q. Following the date of the giving of those notices, will you give me the date of the first meeting between the representatives of your railroad and the representatives of the employees?

Mr. Knoblock: We object as immaterial to this matter

in dispute.

The Court: Read the question. (Question read by reporter.)

The Court: I think he may answer.

A: The date of our first meeting was November 4, 1940.

Q. And just let me ask you one question I should have asked before that: Before the first meeting that you had with the representatives of the Brotherhoods, did you or not receive the official certification from the Mediation Board at Washington, D. C. of these elections, and the

certifications of the representative of each of the Brother-

hoods in question?

A. We had not at that time received the official certification for conductors because the run-off election had not been held. We had received the certification as to all other groups.

Q. Did you, following the run-off election, receive the

certification of that group?

A. We did.

Q. From that time on, what representatives of the employees of your road did you recognize and negotiate with?

A. At all times since the receipt of these various notices from Mediator Murray, subject to the qualification as to road conductors which I will refer to later, we recognized the Brotherhood of Railroad Trainmen as the representative for conductors, brakemen and yard men or ward conductors and yard brakemen as they are

yard conductors and yard brakemen, as they are 1115 sometimes called. We recognized the Brotherhood

of Locomotive Firemen and Enginemen as representative for engineers, firemen, hostler and hostler helpers. We also recognized the Brotherhood of Railroad Trainmen as the representative for switch tenders. They were designated as the representative for those employees.

Q. After the run-off election, whom did you recognize

and deal with as representative for that group?

A. The Brotherhood of Railroad Trainmen for conductors.

Q. Did you, at any time subsequent to the date of receiving notice of the result of the election, deal with any other representatives except the representatives who were designated in these elections? Do you understand my question?

A. I understand your question. We certainly did not for the purposes of collective bargaining and, as far as I can recall at the present time, we did not for any other purpose relating to labor conditions or rules or pay.

Q. You stated that the first meeting was 11-4-40 between your railroad and the representatives of the employees. Were there any other representatives of the Brotherhoods who attended the meetings, in addition to the local representatives of the Brotherhoods?

A. Well, the deputy presidents or vice presidents of the national organizations also attended those meetings, together with the local representatives. The local repre-

sentatives did not attend all meetings, however.

Q. Who were the national representatives?

Mr. Knoblock: I object to this as immaterial.

The Court: I think he may answer if he knows.

1116 A. The national representatives, was that your question?

Q. Yes.

A. The national representatives changed from time to time as negotiations went on. At the beginning of our negotiations in the fall of 1940, Mr. Keenan represented, or stated that he represented, the Brotherhood of Locomotive Firemen and Enginemen.

The Court: I think the objection will be sustained.

Q. Did you continue negotiating with the men until a certain date? Having meetings with them?

A. Yes, with interruptions from time to time.

Q. Where were the meetings held?

A. In the office of Mr. H. H. Best, the superintendent of the railroad.

Q. Who fixed the time and place of meetings?

A. That was agreed upon between the parties at each previous meeting.

Q. That was true all through?

A. With the exception of the first meeting, the time of some of those meetings were established by letter.

Q. After March 17, 1941, was there an additional

party in these conferences?

- A. March 17, 1941? Mr. John F. Murray, a mediator from the National Mediation Board, took part in the conferences from that time on.
- Q. Did that continue down until the 7th day of November, 1941?

A. That did. I believe there was only one conference in that entire period which Mr. Murray did not attend.

· Q. I will ask you if you have prepared a memorandum showing the date, duration and those present in all conferences with the Brotherhood representatives and the

Mediation Board, beginning with the first meeting 1117 and ending with the last meeting with the mediator on 11-7-41?

A. I have. v

Q. And is that document marked "Plaintiff's Exhibit 24"?

A. It is.

Q. And does that truly and correctly set forth the facts with reference to the meetings, time and duration of the

meetings, and the names of the persons present, and the

group or persons represented by those present?

Mr. Knoblock: I certainly wish to object to that (it certainly is not the best evidence) until we have had time to look at it. This witness's is the best testimony. You know that. We can't cross-examine on that record.

Mr. Heyl: I think you can.

Mr. Knoblock: You mean to put testimony in by this sort of compilation when he is available to testify?

Mr. Heyl: He can go through it meeting by meeting.
Mr. Knoblock: Let us examine it and we may have no objection.

The Court: You are offering it? What is the last

question? Anything else?

Mr. Knoblock: May we have a copy of this to inspect?

Mr. Heyl: I am not through with the witness yet. Mr. Knoblock: Do you have a copy that we can have

so we can look it over tonight?

Mr. Heyl: Yes.

The Court: You want an apportunity to examine that before you cross-examine. Is this your last witness?

1118 Mr. Heyl: I think it is.

The Court: I was hoping we could close this tonight, but I think you are entitled to that, and, if you want that, I will call you back tomorrow morning. I understand this is the last witness.

Mr. Heyl: I think so, but I would like to recall anybody for anything I have overlooked, but it will be brief.

The Court: If it is technical, that is all right, but I don't want to go back in evidence.

Mr. Heyl: No, I won't do that.

The Court: We might as well adjourn at this time.

Mr. Heyl: We are not through with this witness. .

The Court: I understand that.

Have you any other documents to submit to this witness?

Mr. Elliott: Original letters from the Mediation Board: The Court: If that is the position we are in, I take it that will close the testimony on the part of the plaintiff. Will you be in a position to proceed at that time?

Mr. Knoblock: We would be in a position to proceed

with certain motions that we will have.

The Court: You will have them ready at that time?
Mr. Knoblock: But, as far as our testimony is concerned, we would like to have a little time.

The Court: I think at this point we can almost say that this is about all the evidence on the part of the 1119 plaintiff, with the exception of some letters attached to the complaint. Then your motion will be pre-

pared, and you will be ready to proceed upon that.

This afternoon you seemed to think you are entitled to go into the question of arbitration as showing good faith. I would like for both sides to furnish & with authorities that will support you or not support you on that point. I may be wrong. I didn't think this should be tried any other way. Of course, the Norris-LaGuardia Act is a part of this proceeding, but I didn't believe this court could go into the question of good faith because the plaintiff wouldn't arbitrate. I understand he wouldn't arbitrate. It isn't before me, but I understand that is true. It didn't seem I could try this question in this case, and you contend I can. I ask you to bring in any authorities.

Mr. Heyl: There are no cases under that section of

the statute. That is a result of my search.

The Court: It take it at this time we can adjourn until tomorrow morning at 10 o'clock.

Trial Adjourned at 5 o'clock P. M.

1120

January 15, 1942.

Trial resumed at 10 o'clock A. M.

Appearances:

Same as before.

ROBERT G. SPRAGUE, having been previously sworn, resumed the stand and testified further as follows, in answer to

Direct Examination by Mr. Heyl,

(Question-page 1026-read by reporter.)

Mr. Knoblock: There is no objection.

The Court: All right!

A. To the best of my information and belief, it does.

Q. And you were present at all the meetings?
A. With the exception of one or two conferences.

Mr. Hevl: We now offer in evidence the papers marked

"PLAINTIFF'S EXHIBIT 24" which has been referred to by the witness.

The Court: Any objection, or do you desire to cross-

examine?

Mr. Knoblock: No.

The Court: It may be admitted.

Q. Did the negotiations with the Mediation Board terminate?

A. Well, of course, the negotiations were with the representatives of the Brotherhoods in the presence of the mediator.

Q. Yes. The services of the National Board, did they

terminate?

The services of the National Board were ter-

minated by letters dated November 21, 1941.

Q. Have you the letter from the National Board dated prior to March 17, '41, advising you that the Mediation Board would take charge of the mediation?

A. Yes. I have two letters from the National Media-

tion Board dated January 14, 1941. Q. I show you two letters dated January 14, 1941, the first one marked "Plaintiff's Exhibit 25" and the second marked "Plaintiff's Exhibit 26." Will you please state whether or not these original letters that I now hand you were received by the plaintiff from the Mediation Board?

A. These letters were received by the plaintiff on the

15th day of January, 1942.

'42 or '41?

'41, yes.

Mr. Heyl: I offer in evidence the two exhibits, and ask to submit, in lieu of the originals, a copy.

The Court: They may be considered as offered.

Go ahead!

Q. Have you the letter of the Board with reference to the termination of mediation?

A. I have two letters from the National Mediation Board, dated November 21, 1941.

Mr. Knoblock: What is that date?

A. November 21, 1941, which I now hand you.

Mr. Heyl: These are offered. Mr. Knoblock: No objection.

The Court: They may be admitted. Mr. Heve And copies substituted?

The Court: And copies substituted. That is what? Mr. Hevl: Plaintiff's Exhibits 25 and 26.

Q. You have handed me two letters dated November 21, 1941, which the reporter has marked for identification "Plaintiff's Exhibit 27" and "Plaintiff's Exhibit 28." Are these the original letters received from the National Mediation Board terminating the services of the Board!

A. They are

Q. And when were these letters received by the plaintiff?

A. These letters were received by the plaintiff-

Mr. Knoblock: I can't hear that.

Q. When?

A. These letters were received by the plaintiff January 15, 1941—1942, pardon me!

Q. I am talking about the other two letters.

A. These letters were received by the plaintiff—the letter in case A-904 on the 24th day of November, 1941, and the letter in case A-903 on the 27th day of November, 1941.

Q. These are the original letters as received by you,

are they? .

A. They are.

Mr. Heyl: The plaintiff offers in evidence the two letters, PLAINTIFF'S EXHIBITS 27 and 28, and asks the privilege of submitting a copy of the exhibits.

There is no objection to these, Your Honor.

The Court: They may be admitted.

Mr. Heyl: May I substitute copies?

1123 The Court: On comparison.

Q. Mr. Sprague, will you tell the court what, in a general way, was discussed at each of the meeting shown as having taken place on Plaintiff's Exhibit 24?

A. May I have the exhibit? (Witness examines same.)

Q. I don't ask for a detailed statement of each meeting, but the general type of discussion, general subject.

A. The meetings—At the early meetings on the 4th and 14th of November, and 3rd and 4th days of December, 1940, very little was discussed other than the date of the future meetings, and an arrangement was made for future meetings. On the 17th of December we handed to the Brotherhood of Railroad Trainmen—

Q. What year is that?

A. 17th of December, 1940, we handed to the Brotherhood of Railroad Trainmen representatives our proposed schedules of rules and working conditions and rates of pay. On January 7, 1941, we handed to the Brotherhood of Locomotive Firemen and Enginemen representatives our proposed schedule of rates of pay, rules and working conditions. On January 8, 1941, we briefly discussed the general principles of the proposed schedules of rates of pay, rules and working conditions submitted by the railroad and submitted by the Brotherhoods. At the end of that conference, the Brotherhood representatives informed us that they could not accept anything in our proposals, and could not change anything in their proposals, and we informed them that we could not see our way clear to accept their proposals as written. These representatives then informed us that they would find it necessary to invoke the services of the National Mediation Board.

1124 Q. Following that, these services of this Board were invoked, and continued down until November,

1941, is that correct?

A. The mediator first arrived on the 17th day of March, and the mediator was present at all conferences from that day until the termination of conferences in November. We held conferences almost continuously from the 17th of March, 1941, until the 15th of April, 1941.

Q. Then what happened the 15th of April?

On the 15th of April-For two or three days prior to the 15th of April the mediator had been conferring with us alone without the presence of the Brotherhood repre-On the 15th of April he informed us that if we could make certain changes in the proposals we had submitted, and suggest what rates of pay we would be willing to pay above standard, he believed that there was a good possibility that we could reach an agreement. therefore asked the mediator for a suspension of mediation for a period of thirty days to enable us to prepare an amended proposal. At the end of the thirty day period, we notified the Mediation Board and the Brotherhoods that this amended proposal was ready for submission. . Prior to this time, the Mediation Board had notified us that mediation was suspended indefinitely. The Mediation Board informed us that a mediator was not available, and that they would inform us when one was available. wrote to the Mediation Board three times in the next three or four months, asking the resumption of mediation, and received the same response each time. The mediator finally returned to Peoria on the 7th day of September-

Q. What year?

A. -1941, and conferences were resumed at that.

1125 time, and continued almost continuously until the

17th day of October, 1941. At that time, we asked that mediation be suspended for a week or so in order that we might prepare further amended schedules. Mediation was suspended. We prepared amended schedules, and mediation was resumed again on the 3rd day of November, 1941.

Mr. Knoblock: I didn't get that,

A. The 3rd of November, 1941, on which date we submitted to the Brotherhoods our revised amended proposals. We then held conferences for several days, and I believe it was the 6th day of November that the Brotherhoods informed us that they could not agree to our proposals. We then asked the Brotherhood representatives to suggest a rate of pay for which they would be willing to agree to the rules and working conditions we had proposed. On the 7th of November they returned and informed us—

Q. 1941, is it?

A. Yes.

Q. Will you give the year each time?

A. On the 7th day of November, 1941, they returned and informed us that they could not state a rate of pay for which they could accept our rules and working conditions, the rules and working conditions which we had proposed. The mediator then handed us arbitration proposals in each case.

Q. What did you do?

A. The mediator informed us when he handed its these proposals that he wished us to reply to the Mediation Board in Washington at the earliest possible date.

Q. Was that a joint proposal to both sides?

A. That was a joint proposal to both sides.

Q. Was arbitration agreed upon by both sides?

1126 A. Arbitration was declined by both sides.

Mr. Knoblock: What date is that?

Q. What was the date of that?

A. We wrote the National Mediation Board on the 17th day of November, 1941, suggesting to the Board that some impartial fact-finding commission be appointed to consider the matters involved in this dispute, and stating further that we could not see our way clear to agree to arbitration.

Q. When did the Brotherhoods respond with reference to the suggestion of the Mediation Board of the joint

arbitration agreement?

Mr. Knoblock: I didn't get that question.

The Court: Read the question.

(Question read by reporter.) A. On November 21, 1941, the National Mediation Board wrote us, informing us that their efforts to settle the controversy by mediation bad been unsuccessful, and informing us that mediation had been terminated as of the date of that letter. Attached to the letter was a copy of letters received from the Brotherhoods, declining arbitration.

And that was dated November 21, 1941, was it not?

The letter from the Mediation Board, yes, sir.

And is that the exhibit 27 and 28?

Yes.

Q. And attached to that exhibit, as a part of it, is a copy of a letter dated November 8, 1941, signed by W. C. Keiser, vice president, B. of L. F. & E., addressed to the secretary of the Mediation Board, isn't that right?

That copy is attached to Exhibit 28, which has reference to case A-904 concerning engineers and

firemen and hostlers.

Q. To Exhibit 27 is attached a copy of a letter from W. Coyle, vice president, B. of R. T., dated the same date and addressed to the secretary of the National Mediation Board?

Mr. Knoblock: What is that date?

Mr. Elliott: November 8.

A. Yes, and that letter has reference to case A-903

involving conductors, brakemen and switch tenders.

As I understand it, so far as the docket of the Mediation Board is concerned, there were two cases, one being case A-903, being the Brotherhood of Railroad Trainmen, and case A-904 related to the Brotherhood of Locomotive Firemen and Enginemen, is that correct?

That is correct.

And that designation on these exhibits refers to two separate cases?

Α. Yes.

Q. Were the negotiations conducted jointly by the two Brotherhoods and your representatives in all your meetings?

Not in all the meetings. There were some meetings at which the mediator would talk to the Brotherhood representatives for part of the day, and with the railroad representations for the remainder of the day, and at some of

those meetings the cases were considered separately. Generally speaking, however, the negotiations were joint.

Q. As I understand it from you, these letters attached to the two exhibits under date of November 21, 1941, of the

National Mediation Board's letter to you,—is at-1128 tached a letter from each of the Brotherhoods dated November 8, 1941, in which each Brotherhood declines

arbitration, is that correct?

A. That is correct.

Q. Will you state, Mr. Sprague, if you can, if there was any difference in the position of the Brotherhoods and the attitude of the Brotherhoods with reference to arriving at an agreement when the mediation proceedings were resumed in September or October, 1941, than they were when

you discontinued or took a recess in April, 1941?

A. When mediation proceedings were suspended on April 15, 1941, we had received the understanding from the mediator that there was a good possibility of our reaching an agreement, provided that we made certain adjustments in our schedules, which we attempted to do. When proceedings were resumed on September 7, 1941, no consideration whatever was given to what had taken place before. Strangers attending the conference in September might well have understood that there had been no prior meetings.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

Q. Don't state it that way. State the facts with reference to it.

At The fact was, we started anew in September. No consideration was given to the prior conferences or to the understandings we had reached with the mediator.

Q. Was that on behalf of the two Brotherhoods? Was

that the attitude?

A. Yes, that was the attitude of the Brotherhood representatives.

Q. Now, was there ever any time subsequent to the notification of the result of the elections held in 1940 that

this plaintiff, the Toledo, Peoria & Western Railroad, 1129 refused to negotiate for the purpose of arriving at a contract with the representatives selected at those

elections?

Mr. Knoblock: Wait just a minute. I object. He already testified they declined on November 17, 1941.

Mr. Heyl: Declined to do what?

The Court: Arbitrate.

Mr. Knoblock: Arbitrate.

The Court: I think he may answer if they refused to negotiate.

A. No, we never refused to negotiate after being noti-

fied of the results of the elections.

Q. Have you, at any time since the elections have been—that have been referred to in your testimony, negotiated with any representative of either Brotherhood, other than those designated at the elections, or any other person for the men?

A. Well, of course, at the elections these Brotherhoods

were designated as the representatives for the men.

Q. That's right. Did you deal with anyone else except those Brotherhoods as the representatives?

A. No, sir, not with respect to the men represented by

the Brotherhoods.

Q. There was a change from time to time in the personnel of the representatives of the various Brotherhoods, was there not?

A. There was.

Mr. Knoblock: I didn't hear the question and answer. The Court: Read it.

(Question and answer read by reporter.)

Q. Now, Mr. Sprague, after the Mediation Board 1130 advised you under date of November 21, 1941, that its services were terminated, what further effort with reference to the appointment of a tribunal to dispose of this dispute was made by the company? What effort did you make to have someone else appointed?

A. We were in communication with the National Mediation Board from time to time after that date, and we repeatedly suggested to the National Mediation Board that the dispute be referred to an emergency board appointed

by the President.

Q. As provided in the Railway Labor Act?

A. As provided in the Railway Labor Act. This was in addition to our other suggestion that an impartial commission be appointed to examine the dispute.

Mr. Knoblock: Wait just a minute. I would like to get this down. Emergency board appointed by the President

under the Railway Act?

A. Railway Labor Act. Mr. Knoblock: All right.

A. This was in addition to our other suggestion that an

impartial commission be appointed to examine the questions involved in the dispute, which commission would be given ample time to thoroughly consider all problems involved.

Q. What was the reply to your request that this matter be referred to an emergency board, as constituted by the terms of the Railway Labor Act 1

A. Well, the Mediation Board never committed itself to us on the matter of the appointment of an emergency board.

Q. Have you the following telegrams dated 12-18, 12-20 and 12-28?

Mr. Elliott: 1941.

Q. 1941, yes.

1131 A. I have mimeographed copies of those three telegrams.

Q. I hand you Plaintiff's Exhibits 29, 30 and 31, and ask you if these are telegrams sent to the National Mediation Board on December 18, December 20 and December 28, 1941, relating to the matter in issue in this case.

A. These are mimeographed copies of three telegrams sent to the National Mediation Board on the dates referred to.

Q. Are they true copies of the telegrams that were sent!

A. They are true and correct copies.

Mr. Heyl: We offer these three exhibits in evidence.

The Court: Let's proceed with this witness. I will give you an opportunity to examine them. I think we might proceed at this time.

Mr. Knoblock: All right.

Q. Now, Mr. Sprague, do you know when you received notice of the call of the strike which was to be effective on December 28, 1941, at 6 o'clock P. M. on that date? When did you receive that notice?

A. There are two notices which should be referred to in that connection.

Q. All right, just refer to them.

A. The first notice we received from the Brotherhoods was a letter dated December 8, 1941, and received by the railroad at 11:44 A. M. on the same day, notifying the railroad that a strike had been called for 11 A. M., Tuesday, December 9. As to the actual effective date of the strike, we received a letter dated December 27, 1941, which was received at 11:15 A. M., December 28, 1941, information

ing the railroad that a legal strike would take effect

Q. The first notice that you referred to was not effective because of a request of the Mediation Board that the strike be postponed, is that correct?

A. The strike was postponed by the Brotherhoods and, as far as I know, it was because of the request of the

Mediation Board.

Q. The strike that is now in force was called and you were notified, as you have just stated, on December 28, 1941, is that right!

A. That is correct.

Q. What did you do following that with reference to inviting all of the employees affected by that strike to return to their places of employment?

A. On Monday, December 29, 1941, we served notice

personally upon-

Mr. Knoblock: You served what?

A. We served notice personally upon each member of the classes of employees involved who could be found. There were a few who were not available. This notice directed these employees to report for work at 9 A. M., Tuesday morning, December 30,—

0. 1941 ?

A. -1941, and advised them that failure to so report would result in termination of their employment.

Q. Did they return, those that went out on a strike?

A. I do not have the records as to how many. I believe that one or two returned. The remainder did not.

Q. The plaintiff is an Illinois corporation organized

under the Railway Act, is it not? The T. P. & W.?

A.\It is a corporation organized under the Illinois statutes.

Q. And under the railway statutes of Illinois?

1133 A. Yes.

- Q. And it is the railroad that is operated over the line that has been described in this case between Keokuk, Iowa, and Effner, Indiana?
 - A. Yes, and Lomax, Illinois. Q. And a branch to Lomax?
 - A. And a branch to Lomax.
 - Q. And a branch to Warsaw?

A. Yes.

Q. Your main office is at the Union Station in Peoria?

A. Yes, it is.

Q. And the shops and yards are in East Peoria, Tazewell County, is that right?

A. Partially in East Peoria and partially just beyond

the East Peoria line.

Q. In Tazewell County, is that right?

A. In Tazewell County.

Mr. Heyl: I offer those documents that haven't been passed upon.

The Court: Have you examined them? Mr. Knoblock: No, sir, we have not,

The Court: I think we will take a recess for about five minutes to give you an opportunity to examine them.

(Recess.)

The Court: You may cross-examine.

Mr. Heyl: I would like to reoffer those exhibits:
The Court: They are offered, as I understand. You
mean the last three exhibits? The telegrams?

1134 Mr. Hevl: That's right.

The Court: I was permitting them to examine them.

Mr. Knoblock: No objection.

The Court: There is no objection? They may be admitted.

Cross-examine!

Mr. Heyl: I would like to ask the witness one question.

The Court: All right.

- Q. Mr. Sprague, after sending the telegrams which you have identified, and which have been marked for identification "Plaintiff's Exhibits 29, 30 and 31," did you receive (and by "you" I mean the railroad, or any of its officers) any statement from the National Mediation Board that an emergency board procedure would be followed?
 - A. No, we did not.

Q. Did you receive any reply?

A. Not with reference to the appointment of an emergency board.

Q. And no emergency board or commission was ever appointed?

A. Not as far as we know.

Mr. Heyl: That's all.

Cross-Examination by Mr. Knoblock.

Q. What reply did you get from the emergency board

or mediation board?

A. I do not have that file of telegrams with me at the present time. There have been a number of telegrams back and forth.

Q. What was the substance of the reply you re-

1135 ceived from them on December 28, 1941?

A. I don't recall the particular wire on the 28th. The substance of most of the replies from the Mediation Board was that—

Q. I am referring to the 28th now. I am not asking

about the others.

The Court: Do you remember any reply you received on the 28th?

A. I don't recall a specific reply on that date, no.

Q. Could you recall receiving any telegram from the. Mediation Board on December 28, 1941?

A. I could not identify it of that particular date with

out the file.

Q. Do you recall receiving a telegram in reply to your

telegram on December 28, 1941?

A. May I see that telegram of the 28th? (Witness examines Plaintiff's Exhibit 31.) I believe we received a reply to this telegram suggesting arbitration.

2. And your company refused to arbitrate, is that

right?

A. We have not agreed to arbitration.

Q. Well,—

A. We did refuse to arbitrate in December, as I have already testified, and we have not changed our position

in that respect.

Q. In reply to this telegram that you received on December 28, 1941, which was a reply to your telegram, you received this telegram from the National Mediation Board informing you, did you not, that the Brotherhoods agreed to arbitrate this dispute, and recommended and suggested that your company arbitrate the dispute, didn't you?

A. Yes, we did.

Q. And you refused to arbitrate?

36 Mr. Heyl: We object to that.

The Court: No, he may answer in view of the evidence that has been offered. The objection was sus-

tained yesterday, but it seems at this time you will have to show all the facts.

Answer the question.

A. We replied to the Mediation Board, stating that we had not changed our position, and that we had already stated our position on arbitration to the Board.

Q. And that was you refused to arbitrate?

Mr. Heyl: I object. He stated-

The Court: One of your exhibits states, does it not, that they refuse to arbitrate?

I think that is correct, is it not?

Mr. Elliott: Yes.

Q. And then, as I understand it, that was still your position after receiving the telegram from the National Mediation Board on December 28, 1941?

A. That was our position with reference to arbitra-

tion.

Q. And it still is?

A. As far as I know, it still is.

Q. Now, the fact of the matter is that after December 9, 1941, you had received another telegram, or at least one other notification from the National Mediation Board, that the Brotherhoods had agreed to arbitrate this dispute, other than the telegram you received on December 28, 1941, didn't you?

A. I can not say definitely as to that without examining

the file. I don't have it here.

Q. Will you examine the file in that regard?

The Court: Do you have the file here?

A. I believe the file is on the table.

The Court: Examine it, then.

A. (Witness complies.)

Mr. Knoblock: Around December 17 or 18 is the first one.

Mr. Heyl: What is the question. Read the question.

(Question read by reporter.)

Q. Will you tell us what date you received that other notification?

A. May I have the question read, please?

The Court: Yes, read it.
(Question reread by reporter.)

A. On December 17 we received a telegram from the Board, urging—

Q. Will you read that, please?

Mr. Heyl: Let him finish his answer, and put one question at a time.

A. On December 17 we received a telegram from the Board, urging arbitration, but that telegram made no reference to the agreement on the part of the Brotherhoods to arbitrate.

Q. Will you read the telegram?

A. (Reading.) "Mr. George P. McNear, Jr., President,

Toledo, Peoria & Western Railroad

"Re cases A-903 A-904 from advice received by the National Mediation Board with respect to the labor situation existing on the Toledo, Peoria & Western Railroad involving its train, engine and yard service employees it appears that conference held at the urgent request of this Board in keeping with its telegram of Friday, Decem-

ber 12, has not resulted in a settlement of the issues 1138 involved. In view of this situation and because of

the war emergency confronting the nation, Mediation Board must insist in the interest of maintaining maximum transportation service that you now agree to arbitrate your differences in conformity with the provisions of the Railway Labor Act. Joint McNear, Robertson and Whitney. Please answer by wire immediately."

Q. All right! Will you read the telegram that you re-

ceived on December 28, 1941?

Mr. Heyl: I want to object to this as not proper cross-examination.

The Court: I think he may answer.

Q. That you received? That the T. P. & W. received?

Mr. Heyl: Was that from the Mediation Board?

A. This is a telegram from Robert F. Cole, secretary of the National Mediation Board, dated December 28, 1941. (Reading.) "Mr. McNear, Jr. President, Toledo, Peoria

& Western Railway Company, Peoria, Illinois.

"Acknowledging your telegram of even date relative to strike of Toledo, Peoria & Western Railway Company of train, engine and yard employees set for 6 P. M. today, Mediation Board has made every reasonable effort to adjust dispute under provisions of Railway Labor Act. At Board's request employees have agreed to arbitrate the controversy. This method of adjustment will provide a fair, legal and definite disposition of the matter and will avert a strike. You have it within your power therefore to prevent interruption to traffic by also agreeing to arbitration in accordance with the spirit of the Railway

Labor Act. We believe that you as an employer 1139 should appreciate the work the Board has done and welcome an opportunity to arbitrate the dispute. The National Mediation Board has done all that in its judg.

ment it may do under provisions of law."

Mr. Heyl: I move to strike the reading of that telegram as not binding upon the plaintiff in this case, and not proper cross-examination. If he wants to offer it in evidence, that is another question, but I don't believe it is proper, in the guise of cross-examination, to read telegrams that are not referred to or discussed by the witness in direct examination.

The Court: In view of the testimony you have offered showing the action that was taken all the way down to the Mediation Board, it seems to me it is proper cross-exam

ination.

Therefore, the motion will be overruled.

Mr. Heyl: The point is this, Your Honor: That the question of arbitration is settled by the provisions of the statutes, and the fact that some board urges or demands that we do something the statute doesn't require us to do is not binding upon us.

The Court: That perhaps is true.

Mr. Knoblock: It does on whether you are entitled to an injunction.

The Court: I am not passing on that, but I think all the facts should be brought out.

The motion is overruled.

Q. Isn't it a fact further, Mr. Sprague, that Mr. Gifford of your organization was one of the parties who 1140 participated in these conferences to a great extent!

A. Yes, Mr. Gifford participated in all confer-

ences in which I participated.

Q. Did not he say to the representatives of the Brother hoods that the company, the T. P. & W., would mediate for aninety-nine years but never arbitrate?

Mr. Heyl: We object to that as improper.

The Court: Yes, objection sustained to what he said. Q. Did he make that statement when he was acting in behalf of the T. P. & W.?

Mr. Heyl: I object to that.

The Court: Objection sustained. I don't see how that makes any difference. I have permitted you to show which I think you have a right to, in view of testimony that the company refused to arbitrate. It stands just

there. I don't think any further evidence will do any-

body any good.

Q. After the men went out on strike on the evening of December 28, 1941, your company also received some telegrams from Joseph Eastman, Federal Coordinator of Transportation, didn't you!

Mr. Heyl: I object to that as not cross-examination.

. The Court: Objection sustained.

Mr. Knoblock: That's all.

The Court: Call the next witness.

Mr. Heyl: I think that's all.

The Court: Any other testimony on the part of the plaintiff?

Mr. Elliott: Just a moment, Your Honor.

1141 Mr. Heyl: That is the plaintiff's case on this motion.

The Court: The plaintiff rests?

Mr. Heyl: Yes.

There is just one matter of pleading we discovered in checking our complaint. There was no allegation in the complaint that we requested the Mediation Board to proceed under the Railway Labor Act to ask for an emergency board and, while that's all been covered by the testimony, there was no allegation, so we ask leave at this time to amend the complaint by inserting an allegation covering that subject, and the amendment has been prepared, sworn to and is presented.

The Court: Have you read the amendment?

Mr. Knoblock: No, I haven't seen it.

The Court: Present it to counsel. I take it there will be no objection.

Mr. Elliott: It merely conforms to the evidence.

Mr. Knoblock: We object to it at this time as coming too late.

The Court: Does it conform to the evidence that we have already heard?

Mr. Knoblock: I think it does conform to the telegrams that have been introduced here this morning.

The Court: You were anxious yourself to get that before the court, so I don't see why you want to object. The objection is overruled. It may be admitted.

Mr. Heyl: Leave granted to amend?

The Court: Leave granted.

1142 Mr. Heyl:. We haven't prepared an order permitting the amendment.

The Court: You can show it on the card. Mr. Elliott: Paragraph 22½, I think it is.

Mr. Heyl: We will-

The Court: I will hear you on your motion, Mr. Knoblock.

(By direction, argument on defendants' motion not transcribed.)

The above and foregoing was all the evidence offered in chief on the trial of said case on behalf of the Plaintiff.

1143. Thereupon, the Defendants, to maintain the issues in their behalf, offered the following evidence, viz:

HERMAN H. SIEBENTHAL, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Herman H. Siebenthal.

Q. And are you one of the defendants in this case?

A. Yes, sir.

Q. Have you— Were you present in the court room and heard the testimony of Larry Ward, one of the witnesses for the plaintiff?

A. Yes, sir.

Orawing your attention to the date of December 31/1941, when plaintiff's train named extra 43 west left the T. P. & W. yards at approximately 7:30 A. M. proceeding to Hamilton, Illinois, on which train was the witness, Larry Ward, the engineer, I will ask you if you at that time stoned this train, or threw any objects of any kind or character at it as it was going under the viaduct!

A. I did not, sir.

Q. Is that the only time that you have been mentioned by any of the witnesses in this case?

A. Yes, sir.

Mr. Heyl: I object to that.

The Court: He may answer that.

1144 Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Where were you at that time?

Out on the picket line.

You were there when the stones were thrown?

No.

Where were you?

Mr. Knoblock: I object; asked and answered.

The Court: He may answer.

A. On the picket line.

Q. Where was the picket line?

A. About thirty feet from the railroad. Q. Is that where the stones were thrown?

A. I didn't see no stones thrown.

Q. Did you see any men around there?

Mr. Knoblock: I object to this. Mr. Heyl: Cross-examination.

The Court: He may answer; cross-examination.

A. Yes, Christoff was there.

Q. And you heard the testimony that Christoff was one of the men that threw stones in this case?

Mr. Knoblock: I object. The Court: Yes, sustained.

Q. How long were you there that day?

Oh Leouldn't say that now.

Q. Who else was there?

Mr. Knoblock: I object as immaterial:

1145 The Court: No, he may answer.

A. Christoff and I; that is all the men I know of.

Q. Did you see any other men around there?

A: No.

Q. Where was the picket line? Mr. Knoblock: I object; asked and answered.

Q. You said it was thirty feet from the railroad, but where was it located?

A. On Washington Street-I can't say what number

it is-East Washington Street.

Q. Down near the Lake Eric junction?

A. Yes, sir. Q. What date was that?

A. December 31.

Q. What?

A. December 31.

Q. December 311

A. Yes, sir.

Q. What time of the day?

A. Oh, I couldn't say just what time it was. I was there all day.

Q. You stayed there all day, did you?

A. Yes, sir.

Q. Mr. Christoff was there with you at that time, and he threw a stone at the train, did he not?

Mr. Knoblock: I object.

The Court: He may answer if he knows.

A. I don't know. I didn't see him throw any stones.
Q. Did he have any stones with him?

1146 Mr. Knoblock: I object. The Court: He may answer.

A. I didn't see any.

Q. He shook his fist at the engineer as the train passed!

Mr. Knoblock: I object to that as immaterial. The Court: Objection sustained as to that.

Mr. Heyl: I think that's all. Mr. Knoblock: That's all.

VERD KIRK, called on behalf of the defendants, and having been first duly sworn, testified as shows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Verd Kirk.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. I will ask you if you were present in the court room when a witness for the plaintiff testified that he had a conversation with you in Couri's grocery store?

A. I was,

Q. What was that witness's name?

A. Grafelman, I think it was.

Q. Grafelman? William A. Grafelman?

A. Grafelman, yes.

Q. I will ask you to state what that conversation was.

1147 A. I met the man in front of Couri's store, and I told him I had heard of a conversation that his wife had put out over the telephone, and I told him if she

didn't discontinue it that she would look the same to us as he did.

Q. Did you at that time say this, or this in substance: That if she did not stop that, somebody would get her?

A. I did not.

Q. Did you at that time make any threat of any kind or character—

A. I did not.

Q. -toward either Mr. Grafelman or his wife?

A. I did not.

Q. Do you recall the conversation on the engine with a witness for the plaintiff by the name of Mr. Hunter?

.A. I did.

Q. What is his name?

A. Hunter. That's all I know.

Q. Would it refresh your memory if I mentioned the name William J. Hunter? Is that the man?

A. That's the man.

Q. Will you state that conversation?

A. I don't know as I could state it all, but it was in regards to this strike question. If I remember right, the T. P. & W. had a meeting over there that evening, and he hung around until the officials had left the premises so he could get on the engine and talk to us.

Q. What was said?

Mr. Heyl: I want to object to the purpose, which is a conclusion of this witness, that he wanted to get on; purely a conclusion.

1148 Q. He got on the engine, is that right?

A. He did get on the engine.

Q. What was said by you and by him?

A. There was nothing said only in regard to this strike.

Q. What was said?

A. I don't know as I could recall word for word what was said,—

Q. State the substance.

A. —but I think there was a remark to him that there might be trouble if there was a strike.

Q. Did you at that time say this, or this in substance: That if there was a strike called there wouldn't be any engines on the T. P. & W. get as far west as the Illinois River?

A. I did not.

O. Or east of Washington Street?

A. I did not.

Q. Did anything else occur there that evening in the

engine cab?

A. He asked me for a copy of the contract. He said he never had been given the privilege by the officers of the T. P. & W. to see it.

Mr. Heyl: I move to strike that as immaterial, and not

tending to prove any issue, and not binding on us.

Mr. Knoblock: Part of the conversation.

The Court: I think he may answer.

Q. What contract do you refer to?

Mr. Heyl: I object to that as immaterial and not proper in this case, and not tending to prove any issue, and not binding on us.

The Court: If I remember the testimony, there was 1149 the testimony of William Hunter in regard to certain

threats he made, and that witness stated in the conversation the threats the man made were that there wouldn't be any train over the bridge. I think he can give the conversation and, for that reason, the objection will be overruled.

(Question read by reporter.)

A. The contract that the T. P. & W. put into effect on the 29th.

Mr. Heyl: I move to exclude that answer as a conclusion of the witness as to what contract it was because there was no contract in force on that date, and I object to it for that reason.

The Court: I think the objection will be sustained. Let him state what was said.

Mr. Heyl! I move to strike the answer.

Q. Then on another occasion were you mentioned as having a club in your hand at the freight house?

A. No, sir.

Q. Were you mentioned in this testimony at any time as having a club in your hand?

A. At the lane at the entrance to the T, P. & W. prop-

erty on Route 24.

Q. Do you recall who testified to that?

A. What?

Q. Do you recall who testified you had a club in your hand?

A. The name?

Q. The name of the man that said you had.

A. That was the electrician, Hulsebus.

Q. Hultgren?

1150 A. Hultgren, or some such a name.

Q. Was that the day Mr. Hultgren referred to? December 30, 1941, at approximately 3:30 P. M.?

A. Yes, sir.

Q. And that was at the west end of the lane, is that true? Were you at the west end of the lane?

A. North end of the lane.

Q. North end of the lane near the hard road?

A. Near the hard road.

Q. Did you have a club in your hand?

A. Yes.

Q. What did you do?..

- A. Driving a hatchet into a block of wood trying to split the block.
 - Q. What were you going to do with the block?

A. Put it on the fire.

Q. For what purpose?

A. To keep warm.

Q. Did you use that club at that time in any way to threaten or menace Mr. Hultgren?

A. I did not.

Q. Did you at that time do anything to threaten or menace Mr. Hultgren?

A. I did not.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. Where was this last incident that you say Hultgren was present? Where was that?

A. At the entrance to the lane to the T. P. & W. prop-

erty.

1151 Q. What date was that?

* A. · I don't, remember what date it was.

Q. And were you there that day all day?

A. I don't remember whether I was there all day or not.

Q. Did you have any conversation with Hultgren at that time?

A. I joked with everybody that went in and out the lane.

O. I am asking you if you had any conversation with Hultgren.

A. Yes.

Q. I didn't ask about jokes. Did you have any conversation with him?

A. Yes, sir.

Q. What did you say to him?

A. I don't know what I said to him. We just joked about everything that was going on.

Q. Did you say anything to him about upsetting the

car he had?

A. I did not.

Q. Now, on the engine with Hunter, you say you had some conversation, and you said that something was said if the strike occurred there would be trouble. Is that what you said?

A. I said there might be trouble.

O. What did you mean by that?

A. What is trouble?

Q. I am asking you what you meant by it. You said it. Can you tell us what you meant by it?

A. I just said there might be trouble.

Q. What kind of trouble?

A. There are lots of kinds of trouble.

Q. Why were you talking to him about trouble in the event of a strike?

1152 ' A. He was asking me about it.

Q. He asked you, didn't he?

A. He was explaining the situation to me, and I said there might be trouble.

Q. And someone said that the engines or trains might be stopped didn't they?

A. If they did, I didn't hear it.

Q. Were you ever present when any of them was

stopped?

Mr. Knoblock: I object. Limit it to the specific times I have directed my direct examination to. We will go into this whole matter then. We will never get through.

The Court: I think the objection will be sustained.

Q. Look at this photograph, Plaintiff's Exhibit 1, and state if you are in that group there any place.

Mr. Knoblock: I object. I did not ask him about it.

The Court: No, I think he may answer that.

A. No. I am not.

O. Is that the place where you talked with Hultgren!

A. It is not.

O. Isn't that the lane that leads to the freight house.

A. I know nothing about the lane to the freight house at all.

Q. Do you recognize the place in that photograph?

A. No. sir. I have never been there.

Q. You haven't any idea where that is, is that it?

A. No, sir.

Q. You don't recognize anything about there?

A. No, sir.

Q. Do you know any of the people on that photograph?

1153 Mr. Knoblock: I object as not proper cross-ex-

The Court: Objection sustained.

Q. Where was it you had this conversation with Hult-

A. I told you at the entrance to the T. P. & W. property at Route 24, the north end of the lane.

Q. The north end of the lane leading to the property?

A. Leading to the property.

Q. Who else was there at that time?

A. I do not know.

Q. Can you name another person that was there?

Mr. Knoblock: I object; asked and answered.

A. Mr. Hulsebus.

The Court: He answered.

Mr. Knoblock: You mean Hultgren?

A. The electrician.

Q. Anyone else there?

A. I do not know.

Q. Any of you men there?

A. I don't know.

Q. You have no recollection?

A. I have no recollection of anybody being there.

Q. What were you, doing if anybody else was there?

A. I don't know.

Mr. Knoblock: I object.

The Court: He has answered.

Q. All you can remember is what you told the court?

A. I can't remember who was there.

Q. How long were you there that day?

A. I don't know.

1154 Q. Have you been there more than one day?
A. I have been there several days.

Q. What were you doing there?

A. Picketing.

Q. What did you do when you picketed?

A. Hung around the fire to keep warm. Q. Did you ever stop any automobiles? A. I did not.

Q. Did you ever see an automobile stopped?

A. I have seen them stopped, yes, by the state sign.

Q. What's that?

A. By the state sign.

Q. I am asking you if any of them were stopped after they got in the lane.

A. Not that I recall of.

Q. Did you ever see an automobile stopped coming out of the lane?

A. I have seen them stopped for the sign.

Q. I am not talking about the sign, stopped by any of your men.

A. No, sir, I didn't.

Q. Were you there every day the strike was ont

A. I was not.

Q. How many days were you there?

Mr. Knoblock: I object.

The Court: He may answer. He is a defendant.

Q. How many days were you there?

A. I do not recall how many days I have been there.

Q. How many men have been there with you each time!

A. There have been different amounts.

Q. How many were there the day you had this transaction with Hultgren?

A. I do not know.

1155 Q. You are the only one you can remember representing the strikers?

A. That's all I can remember.

Q. What time of the day was that?

A. I am not sure; possibly around 3 o'clock, somewhere in there.

Q. Was anyone with Hultgren at that time?

A. I don't remember whether there was or not.

Q. Did you have any conversation with him?

A. Joked with him, laughed with him:

Q: Did you have any conversation with him?

Mr. Knoblock: I submit that's an answer.

The Court: He may answer.

Q. Did you say anything to him?

A. Why, nothing outside of only just joking and cutting up with him the same, same as I did with all of them.

O. Was there someone with him?

A. I don't know whether there was or not.

Q. You don't remember very much about it?

A. No, sir.

Q. Except that you had a hatchet? Do you?

Mr. Knoblock: I object.

Mr. Heyl: I understood him to say he was driving a hatchet into a block.

). Is that what you said?

A. Yes, sir.

Q. That was your answer on direct examination?

A. That was my answer about what I was doing with the table leg.

Q. At that particular time? A. At that particular time?

Q. What became of the table leg?

1156 A. I don't know.

Q. Did you ever see anybody use it there in that lane?

Mr. Knoblock: I object to that.

The Court: Objection sustained to that.

Q. Did you ever use it?

A. Driving that hatchet in the block.

Q. That is the only time you ever used that table leg?

A. As far as I can recall.

Q. How did it happen to be there?

A. I do not know who brought it there.

Q. . What else was there in the way of clubs or table legs?

A. I don't know. That is the only one I ever saw.

Q. Did you ever see any there?

A. I saw that table leg.

Q. Did you see any other table leg?

A. I couldn't recall whether I did or didn't.

Q. Did you see any clubs in the hands of anybody? A. Lots of clubs. I hauled them to make fires with.

Q. You saw clubs there?

A. I said I hauled a lot of them there.

Q. Did you see them there every day until this restraining order was entered?

A. Most of them was burned up.

Q. There was some there?

A. Saturday when I left they was all burned up.

Q. The last time you were there before Saturday, when was that?

A. Sir?

Q. The last time you were there before Saturday, when was that?

A. I couldn't say just when that was.

1157 Q. You did have a talk with Grafelman at the grocery store, didn't you!

A. Nothing, only the conversation which I stated.

Q. And that was you had heard a conversation with reference to something his wife had said over the telephone?

A. I was told a conversation.

Q. And you thought it was your business to tell him that if his wife didn't discontinue that, that you would have the same opinion of her that you had of him? Is that what you said?

A. That's what I said.

Q. What was that opinion?

Mr. Knoblock: I object. That doesn't prove or disprove any-

Mr. Heyl: Cross-examination.

The Court: I think the objection will be sustained.

Q. Did you tell him what you meant by that statement!

A. I did not.

Q. Did you go in the store after he got there?

A. I did not.

Q. Where did you see him?
A. Standing out on the street.

Q. And you went up to him and started to talk to him, didn't you?

A. Yes, sir.

Q. He hadn't said anything to you, had he?

A. No, sir.

Q. Who else was on the engine with you when you talked to Hunter?

A. Fireman Engelhart.

Q. Is he one of the defendants in this case?

A. Yes, sir.

1158 Q. Who started that conversation?
A. Hunter.

Q. What did he say to you?

Mr. Knoblock: I object; all gone over.

The Court: I don't think it has in cross-examination. He may answer.

A. What was the question?

O. What did Hunter say to you?

A. Why, I couldn't just state just exactly word for word. The conversation was in regard to the strike.

Q. What did Hunter say to you first to bring up the subject?

A. I couldn't tell you that.

Q. Haven't you any recollection of it at all?

A. No, sir.

Q. What did you say then? What did you say in response to whatever he said?

A: What do you mean?

Q. I mean what did you say to Hunter after he said something to you?

A. Well, I said a dozen different words to Hunter in

regard to the strike while he was on the engine.

Q. I am asking you about the statement with reference to a strike. What did you say to him?

A. I said there might be trouble. Q. Is that all you said about it?

A. That's as far as I can recall what was said.

Q. You didn't elaborate the trouble any at all, then?

A. No, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1159 H. O. TODD, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. H. O. Todd.

Q. And are you one of the defendants in this case?

A. Yes, sir.

Q. Drawing your attention to the evening of December 30, 1941, between the hours of 5:30 P. M. and 6 o'clock, or shortly thereafter, I will ask you where you were.

A. I was just about the cemetery entrance out on East

Washington Street in East Peoria.

Q. What were you doing there that evening?
A. I just drove up there and stopped in my car.

- Q. And who was there on that occasion when you arrived there?
 - A. At that present time I was the only one there.

Q. Did others come up later?

A. Yes, sir.

Q. Who were they?

A. Well, as I recall it, I believe Mr. McMullen came to me.

Q. Was W. L. Brown there?

A. I didn't see him.

Q. Was Mr. Causey there?

A. I never saw him.

Q. Was Mr. Roskamp there?

A. No, sir.

Q. Was Jerry Underwood there?

A. I didn't see him.

1160 Q. Now, do you recall the occasion when Herschel Thompson drove his car—Who is Herschel Thompson? Do you know?

A. It's my understanding he is a special agent for the

company.

Q. 'And he was on that date?

A. Yes, sir.

Q. Do you know Zeno F. Merrill?

A. I do.

Q. Do you recall the occasion on that date, approximately the time I have mentioned, between 5:30 and 6 o'clock, when Herschel Thompson drove his automobile northerly out of the lane onto hard road 24?

A. Yes, sir.

Q. Which way did Mr. Thompson turn?

A. He started to turn west.

Q. What happened?

A. He had a collision with a truck going east on Route 24.

Q. What occurred after that?

A. He stopped his car, well, very shortly after the collision happened. He stopped his car at the edge of the payment.

Q. On which side of the road?

A. The north side of the road.

Q. Go ahead.

A. To clear the highway of the truck, he drove his car up almost to the entrance of the cemetery and stopped and went back.

Q. You mean Herschel Thompson?

A. Yes, sir.

Q. How far was he from the truck at that time?

A. His car—At that time the truck was standing right at the back of his car.

Q. How far were they apart after they were both off the pavement?

A. Possibly fifty feet.

Q. What did Herschel Thompson do there that you observed, if anything?

He got out of the car and walked back toward the

truck.

Q. What else happened, if anything?

At that time is when Mr. Merrill was discovered sitting in the car.

Who discovered that? Mr. McMullen and I. A.

Q. How did you do it?

With the aid of a light Mr. McMullen had. A.

Go head.

We saw him crouching in the back seat of the car.

Go ahead.

And the door, as I recall, the left door of the car, was smashed in. The imprints of the bumper was yet in the door.

Q. Who opened the door?

Mr. McMullen, as I recall.

What happened?

When Mr. McMullen opened the door, Mr. Merrill came dashing out of the car between us with his fists raised, fighting, toward Mr. Kohtz, Walter Kohtz.
Q. Did you or Mr. McMullen or anyone at that time

order him out of the car?

We did not.

After he came out of the car, what did he do as far as Walter Kohtz is concerned?

A. As I recall, he struck him.

1162 Did Walter Kohtz strike him?

I can not say.

Q. What then?

A. A scuffle went across the highway.

Q. Do you know who he had the scuffle with on the other side of the highway?

A. I do not, as I remained on the north side of the highway.

On that occasion there that evening, who struck the first blow?

A. Mr. Merrill, to my knowledge.

And you saw that?

A. I saw him come out of the car with his hands raised.

Q. Did you see him strike at Kohtz?

A. No, I saw him rush toward Kohtz. I didn't see the blow struck.

Q. Is that all you know of that incident?

A. That is all.

Q. Did you hear—Have you heard any testimony where you have been named at any other place throughout this proceeding?

A. Yes, sir. O. Where?

A. Was named as being at West Washington Street crossing at the switch engine incident.

Q. Were you there?
A. I drove by there.

Q. Was anything going on when you drove by?

A. There was nobody there when we went by.

Q. Did you throw any rocks or stones or make any threats of violence of any kind or character there?

A. I did not.

Q. Are those the only two places you have been 1163 mentioned in this case?

A. Yes, sir.

Q. Did you, on either one of those occasions, make any threats of violence or commit any violence of any kind or character?

. A. No, sir.

Q: Did you, on either one of those occasions, either strike him, threaten anyone or throw anything of any kind or character toward anyone?

A. I did not.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q: What time did you get out to the cemetery entrance that evening?

A. I don't recall the exact time. It was in the evening

It was after dusk,

Q. It was before Thompson and Merrill got there!

A. Just before, yes, sir.

Q. Did anyone go out there with you?

A. No, sir.

Q. Where did you park your car?

A. Right at the entrance of the cemetery.

Q. How long had you been there when they came out!

A. I had just goften out of the way.

Q. You intended to stay there sometime?

A. No, I was going up there and turn around and come back.

Q. What was your purpose in going there? To be there

when Merrill came out of the lane?

A. I had no intention of being there when Merrill came out.

Q. Where had you started that evening?

1164 A. At the viaduct.

Q. What were you doing at the viaduct?

A. Picket duty.

Q. You were on picket duty at the viaduct, and you came back to Route 24?

A. Yes, sir.

Q. And then came up to this lane?

A. Yes.

Q. And stopped there, and where were you going when you got out of the car?

A. Over to the fire where the boys were.

Q. Where did you find McMullen?

A. He was standing there by the fire.

Q. And you got him at the fire, and come back to your car?

A. No, I called him.

Q. Did you go to the fire before you saw Merrill?

A. I did not.

Q. Merrill and Thompson happened to come out of that lane?

A. Yes, sir.

Q. And they had the accident?

A. Yes.

Q. And Merrill's car was taken down near the cemetery entrance?

A. Thompson's car was.

Q. And you and McMullen went looking in that car with the use of a light?

A. Yes, sir.

Q. What purpose had you looking in that car?

Mr. Knoblock: I object.

The Court: He may answer,

- 1165 A. We saw somebody crouching in the car, and looked in to see who it was.
 - Q. Did you look in any other cars that evening?

A. I did not.

What business did you have opening the door?

I did not. Who did!

McMullen, as I recall. A.

Q. You were standing right by him?

Mr. Knoblock: I object.

The Court: He may answer.

I was standing there.

Did you strike Merrill any?

A. No.

Did you beat Merrill after he got out of the car!

Did you see anybody beat him?

No.

Anybody strike him at all?

A. No.

He was not struck that evening?

I didn't say that. I never saw anybody strike him. A.

Q. .Did you say he was struck?

I never saw him.

And was he bleeding at the nose?

I did not. A.

Did you see that?

I did not.

Did you get in your car and leave! Q. 1166

A. I stayed on that side of the highway. They took him across the highway?

A. I couldn't say that,

How many took him across?

A. I couldn't say.

Q. In your best judgment?

Two.

Q: He was able to walk?

A. · I don't know.

How did they take him across the highway? Q.

Α. I don't know.

Q. Did they have hold of him?

A. No. sir.

Q. Did they have hold of him?

A. I couldn't say.

Didn't they push him into the gutter?

I don't know. It was dark at that point.

Q. It was dark at that point, and you couldn't see what happened?

I did not see what happened.

Q. Did you hear what happened?

I heard part of the conversation, yes. A.

What did you hear?

A. I just heard them say, "Merrill is here."

The were talking to him in kind of a Sunday School Q. talk !

Mr. Knoblock: I object. The Court: Sustained.

They were cursing him?

Not to my knowledge.

Did you hear any cursing?

1167 A. I did not.

Did you see them push him?

I couldn't say.

How many were down in the gutter?

A. I don't know.

Did you see any

Q. A. I saw two, as I stated.

Who where they?

Q. A. One was Mr. Kohtz. The other I don't recall.

What became of McMullen?

I don't know.

Q. A. He wasn't with you?

No.

He didn't run away?

A. 'I don't know.

Did he leave before you did?

I don't know.

How many men did you see at that car? Mr. Knoblock: I object; asked and answered.

The Court: No, he may answer.

A. McMullen and Kohtz and I were standing at the left side of the car.

Q. You knew that Thompson was an employee of the . company, didn't you, before you tried to look into the car with this light?

A. Why, yes.

Q. You knew Merrill was in the car?

A. I did not.

Q. What were you looking for in there?

. A. We was looking to see who it was.

1168 What business was it of yours?

Mr. Knoblock: I object; asked and answered.

Wanted to see who it was crouching in the car. How did you know he was crouching if it was dark? A. You could see a shadow in that car.

Q. After you found out who it was, you opened the

A. I did not open the door.

Q. McMullen ?

A. I believe he did.

Q. You stayed right there by the car?

A. Yes.

Q. What did you say to Merrill?

A: Not a word.

Q. Did you ask Merrill to get out?

A. I did not.

Q. What business had you to open the door?

A. I didn't.

Q. What purpose? Why did you open the door?

Mr. Knoblock: Objection. The Court: Sustained.

Q. Did you see anybody go around there?

A. No.

Q. How many men altogether did you see come from the picket line up to the place where Merrill was being beaten?

Mr. Knoblock: I object; asked and answered.

He said three men.

The Court: I think he said three men.

Q. What is the total you saw with Merrill on the premises, either in the road or in the gutter?

1169 A. Two and myself. Q. Two and yourself?

A. Yes.

Q. If Merrill did get a beating, he received it from you and McMullen and Kohtz?

Mr. Knoblock: I object.
The Court: Sustained.

Q. Was W. E. Causey there?

A. I didn't see him.

Q. Would you say he wasn't there!

A. I didn't see him there.

Q. I am asking if you will say he wasn't there?

A. I don't know whether he was there or not.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Was he down at the entrance to the lane?

A. I did not see him.

How many were at the entrance of the lane that didn't leave there?

A. I couldn't tell you.

Did you see how many were there!

A. I didn't.

What were you doing there? To see the boys was all.

Q. You went down to the fire?

I did not. A.

You said you went down and got McMullen.

I said I called.

Q. You didn't go down?

1170 A. No.

Could you see the boys there?

There was a reflection of the fire.

There was a light there?

A. Nothing there but the salamander.

Are you sure there was no light there at that time?

A. Yes, sir.

Was W. F. Kohtz there? I want to be sure I have the right man.

I believe it was. A.

And Walter McMullen? Yes, sir.

A.

And yourself?

Yes, sir.

Was there anything happened after that, after you got through with Merrill?

A. After what?

After you fellows got through with Merrill. I had nothing to do with Merrill.

Did you see him get back in a car?

A. I did not.

Did you stay there?

A. I did.

Where were you all the time?

I went to my car.

How far was your ear from the Thompson car?

Probably ten or twelve feet.

You went back to your car? I did.

How far was that from the end of the lane?

A. That is probably a hundred feet, maybe farther, to theQ. Your car was parked in a westerly direction, or easterly

A. It was headed toward the cemetery, at the west side

of the entrance.

Q. And it was parked on the left side?

A. Yes.

Q. The Thompson car was parked on the same side!

A. No, sir.

Q. Where was the Thompson car?

A. It was headed westerly just east of the entrance.

Q. He was on the same side of the street, wasn't he!

A. Yes.

Q. And there was ten feet between the two cars?

A. At least that far.

Q. What?

A. At least that far, yes.

Q. Did you see Mr. Merrill at any time enter that car again?

A. I did not.

Q. At no time?

A. No.

Mr. Knoblock: I object; asked and answered.

Q. Did you see him come back over the bank after they had pushed him down in the sewer?

A. I did not.

Q. The last you saw was when he went in the sewer, and it was too dark?

A. The last I saw was when they were crossing the highway.

Q. You saw him down in the sewer!

A. I did not.

1172 Q. You heard them there, didn't you?

A. I did not.

Q. How did you happen to be over there that day that

the train was at this crossing?

A. As I recall, I believe I am named as being with Mr. Totten, Leo C. Totten, at that time. We went up to the office to get our checks and we got our checks, and came out of the office and drove across the bridge and by there.

Q. You knew the train was going to be stopped?

A. I did not.

Q. You heard that discussed in the meeting the night before?

A. I did not,

Q. Did you stop!

We did.

Did you hear the discussion the evening before?

Mr. Knoblock: I object.

The Court: He may answer.

Were you at the meeting? That is my question.

I was at the meeting.

At that meeting they arranged to stop the train?

They did not. A.

Did they discuss it?

They did not. A.

Did they discuss every night what was to happen ·Q. next day?

I imagine there was-.A.

Every man was assigned his job?

Just as pickets. A.

Just as pickets, and that is all?

A. Yes.

Q. You did nothing in connection with this strike except act as a picket.?

That is all.

How dld you happen to be there at the time this train was stopped at Washington Street?

Mr. Knoblock: I object; asked and answered.

The Court: He answered.

Who was there?

Totten. A.

Did you see: Wilson there? Q.

A: I believe Wilson was with us.

Was he getting his check, too? A: . He came out of the office, too.

Did he get his check?

A. I couldn't say.

You saw Newdigate there?

A. I did not.

Q. Did you see Kneisley there?

A. I did not.

- Q. Were you all trying to get your checks or not that day?
 - A. I don't know; just us three at that time.

Q. Did you see Lucas there that day?

A. I did not.

Did you see Mr. Mack there that day?

A: I did not.

You didn't see any of these men?

I did not.

Q. Did you stop your car?

A. I wasn't driving my car.

1174 Q. Did the other man stop!

A. Yes.

Q. Who was the other man driving?

A. Mr. Totten.

Q. Where did he stop his car?

A. At the right hand side of the road going east just about at the engine.

Q. Where?

A. About at the engine.

Q. How long were you there?

A. About five minutes.

Q. What did von stop for!

A. Stopped and locked at the engine.

Q. You had never seen an engine before?

Mr. Knoblock: I object to that. The Court: Objection sustained.

Q. What were you looking at the engine for?

A. The damage done to it.

Q. Do you know who did it?

A. We did not.

Q. What damage did you see?

A. Cab windows broke out.

Q. You never threw any stones?

A. No.

Q. Did you see any members of the crew?

A. No.

Q. They were all gone?

A. As far as I know.

Q. Did you see them running, and some of your 1175 men running after them?

A. I did not.

Q. What did you stop there for? Mr. Knoblock: I object; answered.

.The Court: He said to look at the engine.

Q. You went off the pavement and parked your car!

A. We just stopped.

Q. Did you go off the pavement?

A. I don't know whether he was off the pavement or not.

Q. Did you get out of the car?

A. No.

. Q. Did any of them get out of the car?

A. No.

How long did you stay there?

Five minutes. A.

Before the train left?

We were there five minutes. And then where did you go!

On to East Peoria.

Back to East Peoria?

Not back to East Peoria; on to East Peoria. You were coming from East Peoria at the time?

No. sir. A.

Where were you coming from?

I answered that.

Mr. Knoblock: I object; asked and answered.

The Court: He has answered.

Q. You were in the office at the Union Station?

A. Yes.

Mr. Knoblock: I object; asked and answered.

76 The Court: He has answered.
Mr. Heyl: That's all.
Mr. Knoblock: That's all.

CLARENCE S. GABBERT, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

State your name, will you?

Clarence S. Gabbert, A.

Are you one of the defendants in this case?

Were you present in court when Larry Ward testified, one of the witnesses for the plaintiff?

Yes, sir.

Drawing your attention to the statement of Mr. Ward having reference to either at Franklin Street bridge or the first street on the other side of Cedar Street on the day of December 31, 1941, while Larry Ward was the engineer on T. P. & W. train extra 43 west, I will ask you if you, on that occasion-if you were present on that occasion.

A. No.

Q. Did you throw any rocks or stones or any other objects on that day at any time, and break the headlight on this train that Mr. Ward was the engineer upon?

A. I did not.

Q. Now, directing your attention to the statement 1177 Mr. Ward made of the occurrence at Wheeler's cross-

ing, in which he stated that you were present and threw some objects or rocks at the engine at that time, I will ask you if you were present?

A. No.

Q. Were you ever in the vicinity of Wheeler's crossing on that date?

A. No.

Q. At all those two places that I have mentioned, were you or were you not present on those occasions?

A. I wasn't present on either occasion. Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. What is the first date that you are talking about!

A. This was on the 31st.

Q. Where!

A. At Persimmon Street that I was accused of.

Q. Were you down in that neighborhood?

A. I was not.

Q. Where were you that day?

A. I was at home.

Q. All day? A. Not all day.

Q. What time was it that they accused you of knocking the headlight out of the engine?

A. I don't know directly what time, but Mr. Ward

stated that he left the yard at 7:30.

Q. And you say you are not the C. S. Gabbert who hit the headlight with a stone and broke the light?

A. I didn't break the light.

1178 Q. I am asking you if you threw a stone at the engine.

A. I did not.

Q. At no time!
A. At no time.

Mr. Knoblock: Limit it to this occasion.

The Court: He may answer. He is a defendant.

Q. Did you ever throw a stone at any of these locomotives?

A. I did not,

Q. You are sure of that, are you?

A. I am positive.

Q. Were you down near the American Milling Company on January 2?

Mr. Knoblock: I object. I didn't go into that. The Court: He may answer. He is a defendant.

A. No, sir:

Q. You were not down there at all?

No. sir, I was not.

Mr. Knob ock: The plaintiff has accused these men of different actions, certain actions on certain occasions, and we are putting these men together into this specific occasion alone. If they are going into their conduct during this entire strike, we will never get through.

Mr. Heyl: We can ask the defendant anything in re-

gard to the case.

The Court: Let the record show an objection is made

to the question, and the objection is overruled.

Q. Were you at any place near the train on December 31, 1941, after it left the yards at East Peoria and before it reached Canton 12:08 P. M. that day?

1179 A. On the 31st?

Q. Yes, sir.

A. No, sir.

Q. Were you near it at any time?

A. No, sir.

Q. Were you near the train on January 2, 1942?

Mr. Knoblock I object as not proper cross-examination. I never asked him anything about January 2.

The Court: He may answer. The objection is overruled.

A. No, sir.

Q. At any time after it left the yards in East Peoria until it arrived at Canton?

Mr. Knoblock: I object; not proper cross-examination. The Court: Objection overruled. He may answer.

A. No, sir.

Q. Were you ever near any of these trains at any time during this strike?

Mr. Knoblock: I object; not proper cross-examination.
The Court: The objection will be sustained whether he was near the train.

Q. On any of the instances testified to in this case, were you near any of them?

Mr. Knoblock: I object; not specific enough.

The Court: Objection sustained.

Q. You know John Gimming, do you not?

Mr. Knoblock: I object; not proper cross-examination. The Court: He may answer.

A. Yes, sir.

1180 Q. Was he with you on December 31?

A. He wasn't at home with me.

I am asking if he was with you any time that day.

A. No. sir.

Q. What is your answer?

A. I don't know.

Q. Well, don't you know where you were that day!

A. Yes, sir.

Q. Where were you!

A. At home.

Q. All day? A. Not all day.

Q. Where were you when you weren't home?

A. I was up at the meeting.

Q. What meeting? A. Jefferson Hotel.

Q. What meeting was that?

A. That was the meeting of all striking employees.

Q. And that was held at what time of day?

Mr. Knoblock: I object as not proper cross-examina-

The Court: He may answer.

A. '11 o'clock.

Q. In the morning?

A. Yes, sir.

Q. How long were you there?

Mr. Knoblock: I object; not proper cross-examination, and immaterial.

The Court: He may answer.

1181 A. I was there probably until 2 o'clock. Q. Then where did you go?

Q. Then where did Mr. Knoblock: I object.

The Court: He may answer.

A. The 31st? I went down and got my check.

Q. Where?

A. Union Station.

Q. Go in a car?

A. Mickey McGuire took me. Q. Then where did you go?

A. Out to his home.

Mr. Knoblock: I object; not proper cross-examination.

The Court: He answered. The objection is overruled.

Q. What time did you get your check at the station?

Mr. Knoblock: I object; immaterial.

The Court: He may answer if he knows.

A. I don't know definitely. It was in the afternoon after the meeting.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

I believe that is all we have to present today.

The Court: All right!

Will 9:30 in the morning be all right with you gentlemen!

Trial Adjourned at 4:30 o'clock P. M.

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January 16, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

(Discussion off the record.)

HAROLD JAMES DILLEY, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. Harold James Dilley.

Q. Are you one of the defendants in this case?

A. Yes.

Q. Are you one of the defendants in this case?

A. I am.

Q. You will have to speak louder.

A. I am:

Q. Directing your attention to the 2nd day of January, 1942, at approximately 7:30 A. M., I will ask you if you met Mr. Gimming and Mr. Brewster.

A. I did.

Q. And where did you meet them?

A. Near the East Peoria police station, across the street probably fifty feet this side, west.

Q. And did you get into their automobile?

A. I did.

1183 Q. Who was driving? A. Mr. Gimming.

Q. And where did you sit?
A. I sat in the back seat.

Q. And where did Brewster sit?

A. He sat in the front seat with Mr. Gimming.

Q. Where did you go from there?

A. We drove across the river and down Washington Street.

Q. And at the Hiram Walker crossing or the Persimmon crossing, whichever it is called, who, if anybody, did you see?

A. We saw Mr. Kipling. Q. Was anyone with him?

A. No, I didn't observe anybody with him.

Q. At that place did you hear Mr. Gimming say this, or this in substance to Mr. Kipling: "They may go out to the west but they are not coming back. You are not coming back, either. We have got enough to get you and the rest of them"?

A. I never heard anybody saying anything like that.

Q. Was there any remark by any one of the three parties in the automobile in which you were riding to Mr. Kipling at that time?

A. It was impossible. The windows was wound up.
Mr. Heyl: I move to strike the answer as not responsive.

The Court: Yes.

Q. Did you make any remarks to Mr. Kipling?

A. No.

Q. Did any of the three of you make any remarks to Mr. Kipling at that time?

A. No.

1184 Q. After that occasion, what did you do, if anything?

A. We turned around and drove to Allied Mills; followed Mr. Kipling.

Q. What was your purpose?

Mr. Heyl: Immaterial what his purpose was.

The Court: He may answer.

A. There had been a rumor-

Mr. Heyl: Objection.

Mr. Knoblock: Let him finish!

A. There had been a rumor around that Mr. Kipling was going to get us boys.

Q. By "us", you mean the striking employees?

A. The striking employees.

Mr. Heyl: I move to strike that as hearsay and incompetent.

The Court: It may stand.

Q. Where did you follow Mr. Kipling to with reference to the Iowa junction?

A. Well, we followed him to the Allied Mills.

Q. And did Mr. Gimming bring his car to a stop behind

Mr. Kipling's car there!

A. No, it was beyond. We slowed down by the Allied Mills first, and then we went, I would say, oh, about the best I can give is that Elm Grove Tavern beyond the Allied Mills. We went—I don't recall the distance because I have never rode that road enough to know, but we went possibly a quarter of a mile beyond the Elm Grove Tavern.

Q. You mean a quarter of a mile beyond Allied Mills

by the Elm Grove Tavern! Isn't that correct!

A. Well, yes.

1185 Q. What did Mr. Kipling do, if anything, with reference to his automobile there?

A. He stopped.

Q. Where were you with reference to his stop when he stopped?

A. Directly behind him.

Q. Did you observe anybody else on the other side of the road at that time?

A. I observed Mr. Totten and Mr. Lucas.

Q: Where was Mr. Totten at that time? A. Sitting in his car behind the wheel.

Q. Did you observe Mr. Lucas?

A. I did.

Q. Where was he standing?

A. He was standing outside the car with his hand on the car door.

Q. What did Mr. Totten and Mr. Lucas do just as you came to a stop?

A. Just as we came to a stop, Mr. Lucas got in the car and they drove away.

Q. At any time there did you see Mr. Lucas throw any bottle! What direction did they drive?

A. They drove toward Peoria.

Q. At that time did you see Mr. Lucas at any time throw any bottle with any benzine or any inflammable fluid of any kind toward any train?

A. I never saw Mr. Lucas throw anything.

Q. Was he in full view of you at all times as you drave up there?

A. He was.

Q. Then what happened after they left?

A. After they drove away, Mr. Kipling drove away and followed them. We was going to turn around also, 1186 and about that time I heard some shooting and a lot of commotion and steam blowing from the engine that

of commotion and steam blowing from the engine that was coming along there at the time, and I jumped out of the car and ran across the highway on the shoulder to see what was going on and, as I got there, I was knocked down.

Q. Knocked down by what?

A. A slug. I got shot.

Q. Do you know where that shot came from?

A. Yes. Q. Where?

A. It came through the curtain of the engine because I could see the flashes coming through there.

Mr. Heyl: I move to strike the latter part as a conclu-

sion.

The Court: He said he saw the flashes.

Mr. Heyl: That is right. I submit the other isn't, but that is a conclusion.

The Court: It wouldn't have much weight. It is a conclusion. I think it may be stricken, if you want to be technical, because you can't tell—

Q. After you were shot, what did Mr. Gimming and

Mr. Brewster do?

A. They picked me up and put me in the car, and took me to the Proctor Hospital. We stopped at the Barton-ville City Hall and called—I don't recall that doctor's name—and he examined me, and said they had better take me to the hospital. I believe it was Williams, though. I am not right sure.

Q. At any time since this strike was called on December 28, 1941, have you made any threats or committed any acts of violence against the employees or property of this plain-

tiff, or thrown any stones or clubs, or anything of that kind or characer?

1187 A. I have not.

Mr. Knoblock: All right! You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. When you were taken to the hospital in this car, where did they park the car?

A. At the hospital, you mean? Right directly in front.

O. Directly in front of the hospital?

A. Yes.

Q. Which side? Which door? There are two doors to

the Proctor Hospital.

A. You kind of confuse me there because I am really not very well acquainted with that neighborhood. It was the front of the hospital, I would say.

Q. Toward the river?

A. What is the street it faces?

Q. Second Street is the street from Jefferson south past the hospital. Fisher Street is on the other side.

A. It's kind of confused, but it seems to me like it was

the front of the hospital, the way it faced.

Q. That would be on Second Street. About where was this car parked with reference to the front door?

Mr. Knoblock: I object as immaterial.

Mr. Heyl: It is very material. We will show a reason later.

The Court: He may answer.

A. Well, now, I couldn't give you the exact location. It was near the front door, I'd say.

1188 Q. Now, whose car was that?

A. John Gimming's.

Q. And then they took you to the hospital, and you remained there, is that right?

A. That's right.

- Q. Now, did you observe what was in the automobile they took you to the hospital in on the floor of the automobile?
 - A. Well, I couldn't exactly recall that, no.

Q. Some rocks and brickbats, weren't they?

A. No.

Q. You are sure of that?

A. I am not sure that there was anything in there. I don't recall that.

Q. Could you recognize any part of this automobile, the inside of it, if you would see it? The seats and seat covers!

A. Well, I have seen the car several times, and the

chances are I would.

Q. Now, what was your purpose in going down to the Allied Mills on the day that this transaction occurred?

A. May I start from the first?

Q. Just answer my question first, will you, please? Mr. Heyl: Read the question to him.

(Question read by reporter.)

A. Well, Mr. Gimming come by and picked me up at the P. & P. U. junction, as I told you, and he said, "Do you want to take a ride down near Hollis!" I said, "I don't mind if I do." I said, "Although I have worked all night, I have been on picket duty here, I just feel kind of woozy, and it might do me good."

· Q. What was—

- 1189 A. I am not finished answering. He said, "I would like for you to go down with us because we understand Mr. Kipling is going to get a few of the boys today, so we will just go down and see what Mr. Kipling does."
- Q. Where was Kipling at that time when this conversation took place?

A. Well, I couldn't say as to that.

Q. And did you see Kipling that morning before you got down to the Hiram Walker crossing?

A. No.

Q. And when you got down to the Hiram Walker crossing, you saw Kipling?

A. We saw his car.

Q. Did you have any conversation with him at all!

A. It was impossible.

Q. Did you have any conversation with him?

A. No.

Q. Your car was close to him, wasn't it?

A. Yes.

Q. How close was it?

A. Oh, I would say close as from here to Mr. Coyle is as near as we got to him.

Q.' Did he say anything to you?

A. No.

Q. What was the purpose of your going there at that crossing at that time?

A. Just picked him up there at the crossing, and we just pulled up behind him to see what was going on.

Q. What business had you following Kipling?

Mr. Knoblock: I object as having been asked and 1190 answered.

The Court: He may answer.

A. What business was it following him? As I said, there was a rumor around that Mr. Kipling had made threats he was going to get some of us fellows that were on strike, that he was going to make it hot for us.

Q. When he made his threat to you, you thought it was necessary to press him and keep right up with him, did

you?

Mr. Knoblock: I object.

The Court: He may answer.

A. No, he didn't make that threat directly to me.

Q. What was your purpose in going down there and following Kipling on the road?

Mr. Knoblock: I object; asked and answered.

The Court: 'He may answer.

A. As I told you, if he pulled any rough stuff I was merely as a witness.

Q. You were going to take a hand in the rough stuff, were you?

Mr. Knoblock: I object.

The Court: He may answer.

A. No.

Q. What were you following Kipling for if you knew there was a rumor he was going to get you fellows, as you stated on your direct examination?

A. Because we have got to have witnesses the same as

the company.

Q. And you have got to have plenty of "strong arm" men along if there is any trouble? Is that what you mean?

Mr. Knoblock: I object.

The Court: Eustained as to that.

1191 Q. After you saw him at the Hiram Walker crossing, you stopped again, did you not, at the Iowa Junction? M. & St. L. junction?

A. We didn't come to a full stop there. We slowed up. He pulled up like he was going to stop, and we pulled up

behind him.

Q. The train was going along near where Kipling was. was it not?

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A. Yes.

Q. Did it pass at the Hiram Walker crossing while Kipling was there?

A. Yes.

Q. Did you see Kipling do anything except sit in his automobile?

A. No.

Q. Did he make any threats to you or anybody else!

A. No.

Q. He waited until the train passed the crossing before he started up, didn't he?

A. Yes.

Q. Is that right?

Mr. Knoblock: Do you recall the question now? (Question read by reporter.)

A. The engine had passed. I don't recall how many cars.

Q. The next place you saw him was down at the low junction?

A. Well, a little—yes.

Q. Then he stopped again down by the Central Illinois Light substation, didn't he, below the viaduct? Below the South Adams Street viaduct?

A. You kind of confuse me on that.

The Court: Read the question. (Question read by reporter.)

A. No, I don't remember him stopping anywhere.

Q. Did you stop there?

1192 A. No.

Q. Then where was the next place you stopped!

A. Well, the next place is where the—that was beyond the Allied Mills.

Q. It was right across from the Allied Mills, wasn't it, at the switch?

A. No. No.

Q. You stopped there, didn't you!

A. No. No, we didn't stop there.

Q. Weren't there some cars set out there?

A. If there was, I didn't see them.

Q. You don't say that they were not set out?

A. No, I couldn't say that.

Q. Then you went down to the Elm Grove Tavern?

A. Yes.

Q. And came back?

A. Beyond the Elm Grove Tavern.

Q. How far did you go beyond?

A. Oh, I'd say four or five blocks beyond there.

Q. What was the purpose in your going down that road that morning and turning around?

A. We was following Mr. Kipling, as I said.

Q. He wasn't ahead of you at that time?

A. Oh, yes.

Q. Mr. Kipling wasn't down below the tavern, was he?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. Well, where was Mr. Lucas at the time you 1193 turned around down there?

A. We didn't turn around, only when they brought

me back to the hospital.

Q. Well, you say that this happened four or five blocks below the Elm Grove Tayern?

A. Yes.

- Q. You are sure of that, are you? A. As near as I can recall, yes.
- Q. Didn't you go in the Elm Grove Tavern and buy a drink for several fellows before this occurred?

A. No.

- Q. Were you in the Elm Grove Tavern? A. Yes, I went in the Elm Grove Tavern.
- Q. When did you go in the Elm Grove Tavern?

A. When we first got down there.

Q. You saw the proprietor—not the proprietor, but the owner of the property who lives in a little house. You saw him on the railroad track, didn't you?

A. No, I wouldn't know him.

Q. Did you see a man on the railroad track before this train arrived?

A. No, I don't recall any.

Q. Isn't it a fact that you told the man that was walking across the railroad track before this train arrived that he had better get back because there was going to be trouble with that train?

A. No, not me.

Q. Did you talk to anybody that was on the railroad track?

A. No, not me.

Q. Did you get there before the train did?

1194 A. We stopped at the tavern, and I don't believe that the train had got there yet.

Q. Then where did you go! Go down below!

A. Yes.

Q. How many fellows were there at the tavern?

A. I couldn't say. I don't really remember; three or four.

Q. What was the purpose of your waiting at the tavern!

A. I went in and got two cigars.

Q. What was your purpose in waiting until the train arrived?

A. We didn't wait there.

Q. What was your purpose in waiting until the train arrived?

A. We didn't wait until the train arrived.

Q. What were you doing down there that morning?

A. I had to go in to the toilet.

Q. You drove clear down to the Elm Grove Tavern to go to the toilet?

Mr. Knoblock: I object.

The Court: He may answer.

A. No.

Q. What was your purpose in going down below the

tavern that morning?

A. I had to go to the toilet when we got by the toilet, and I said, "I am going to get a couple of cigars and use the toilet."

Q. Then the purpose you had in going down there and waiting for the train was to go to the toliet, is that right!

A. No.

Q. Tell me what business you had waiting for that train down on that road?

A. I wasn't.

Mr. Knoblock: I object. He stated twice he didn't

The Court: Objection sustained

Q: Did you wait for the train?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. What business did you have going down there that morning when that train was going along there?

Mr. Knoblock: I object.

The Court: He may answer.

A. I was following Mr. Kipling in Mr. Gimming's car.

Q. Were these two cars, Kipling's car and your car, the only cars down there?

A. No.

Q. Give me the names of some of the other cars that

were there.

A. When we stopped and I went in to the toilet and went on down, followed on down and pulled up behind Mr. Kipling, I observed Mr. Totten's car across the road headed toward Peoria. Mr. Totten was sitting behind the wheel. Mr. Isucas was standing right outside of the car with his hand on the car door.

Q. You have told that?

A. Yes.

Q. I want to know who else you saw down there? Whose cars you saw there?

A. Well, I don't recall.

Q. Were there any others? Just arswer my question.

Mr. Knoblock: He answered that.

The Court: He may answer whether he saw any cars.

1196 A. Yes, I saw other ears.

O. Whose cars were they?

I couldn't say.

Q. Were these strikers?

A. I couldn't say.

Q. You'can't identify any other person,-

A. No.

Q. -is that it?

A. Yes.

Q. You are telling the court you didn't see any other person there who was in the strike except Totten and Lucas and the two men with you?

1. I didn't see anybody else there.

Q. Did you see any cars standing there?

A. Yes.

Q. Which way were they headed? A. It was headed toward Peoria.

Q. All of them?

A. I wouldn't say as to that, no.

Q. Did you throw any stones at that train?

A. No.

Q. Did you see a little boy about sixteen years old coming down the road about the time you got shot?

A. No.

Q. You didn't see him?

A. No, I didn't.

Q. You didn't throw a stone when he was coming down the road near you?

A. No.

1197 Q. What did you do when you got down there if

you didn't throw stones?

A. I rar up on the bank on the shoulder of the highway. I heard some shooting before I run over there. I was the first one out of the car, and I ran across the road and on the shoulder of the highway. I ran up there, and I could see the flashes coming from the cab of the engine through the curtain. The next thing I knew, I got knocked down.

Q. How far were you from the place where you stopped on the bank when you say you were shot when you heard

the shooting?

Mr. Knoblock: I don't understand that. Mr. Heyl: I will withdraw that question.

Q. How far were you from that spot when you got out of your car?

A. I would say it was the width of the highway and possibly—oh, I'd say fifteen feet from the highway.

Q. The width of the highway and fifteen feet, is that right?

A. That's near that, yes.

Q. And the engine was down in this cut, wasn't it!

A. Yeah.

Q. And you got out of the car and traveled fifteen feet and across the highway,—

A. Yes.

Q. —is that right?

A. That's right.

Q. After you heard the shots, is that right?

A. That's right.

Q. After you heard the shots and went up there to see, you got hit?

A. I did.

Q. Did you throw anything at that train?

1198 A. I did not.

- Q. Did you see anyone throw any stones at that train?
 - A. I did not.
 - Q. Not a soul?
 - A. Not a soul.
 - Q. Did you see any broken windows in that train?

A. No. I didn't see any windows.

Q. Did you see any fire in that train in the cab?

A. No, only coming through the curtain was the flashes

of the pistol.

I understand. You have told that several times. am asking you about the inside of the cab. Flames, did you see any flames?

No. A.

Q. Did you see any men on the locomotive?

I did not...

It was running without anyone on it, is that what vou mean?

Mr. Knoblock: I object.

The Court: Objection sustained. Did you see the engineer?

- A. I did not.

Did you see anybody?

No.

And no man in your presence along that highway threw a stone at that engine?

·A. No.

Is that right? Q.

I never say anybody. A.

You were within sight of that train— A I was.

1199 -for sometime before it reached that point? A. No, I wasn't in sight of that train before it reached that point because I couldn't see it.

When did you first see the train?

I could see the smoke. I was sitting across the highway in the car, and it hid my view.

What was your purpose in sitting in the car? A. We was watching Mr. Kipling, as I said before.

He didn't do anything?

A. No.

Q. How many of you were in this car?

A. Three.

Q. Were any of you armed?

A. No, none of us.

Q. Did you have any brickbats in the car at that time? A.

No.

Q. How long did you wait there for Kipling?

At this point? I would say we possibly sat there two or three minutes.

Were there any other cars waiting for Kipling?

I couldn't say as to that.

Were there any other cars waiting there?

A. I seen some other cars.

. Whose cars were they?

Mr. Knoblock: I object. He said he didn't recognize any of the rest of them.

The Court: I think he did say that.

Q. Did you see the train switching at Allied Mills!
A. No.

1200 Q. You don't know what occurred there, then?

Q. You don't know whether any of the occupants of your car got out there or not, then?

A. There was no occupants in my car. I would know

that, certainly. There was nobody got out there.

Q. You didn't get out of the car any time from the time you left Peoria until you got out after you heard the shooting?

A. No. Oh, yes, I got out at the Elm Grove.

Q. You got out there as you went down?

A. · Yes.

Q. And went in to the toilet and came out, and drove down the road a ways?

A. That's right, and pulled up behind Mr. Kipling.

Q. Then pulled up and stopped there?

A. Yes.

Q. This photograph that I show you, Plaintiff's Exhibit 4, is the Elm Grove Tayern, isn't it?

A. Yes, it looks to me like it.

Q. And Plaintiff's Exhibit 5?

A. Uh-huh.

Q. Now, when this shooting occurred, you were standing on the bank some place along there, weren't you?

A. No, we was beyond that.

Q. Which way?

A. I would say west.

Q. How far?

A. Oh, four or five blocks beyond there.

Q. Did Kipling stop at the Allied Mills?

1201 Mr. Knoblock: I object as having been asked. Mr. Heyl: No, it hasn't.

The Court: Did he or not?

A. I answered. I said he slowed down.

Q. Did he stop? That is the question I asked you.

A. No.

Q. At no time at the Allied Mills, is that correct?

A. Not at that time we was following him, no.

Q. You followed him all the way from the Iowa junction to the point to below, several blocks below, the Elm Grove Tavern?

That's right.

Q. And then he turned around?

And when he turned around, did he stop!

A. I couldn't say whether he stopped or not. As I said before, he turned around Mr. Totten and Mr. Lucas as we pulled up there-

Mr. Heyl: I am going to ask him to answer my ques-

tion. I want to know what Kipling did.

The Court: Read the question.

(Question and answer read by reporter.) The Court: He has answered the question.

Q. Why did you turn around, then, if you don't know whether he turned around? You were following him, weren't vou?

A. We didn't turn around.

You stated before that you had turned around and were on the other side of the road?

Mr. Knoblock: I object. He did not say that.

The Court: Objection sustained.

When did you quit following Kipling? A. When he turned around there.

1202 Q. Then he did turn around? You said a moment ago-

Mr. Knoblock: I object.

Q. You said a moment ago that you didn't know whether he turned around or not.

Mr. Knoblock: No, he didn't.

The Court: Did he turn around or not?

A. He turned around, yes.

Q. Where did he turn around?

Right where I got shot. A.

Was it before or after you got out of your car?

A. It was before.

Did you go on below, then, and turn around?

A. No.

You didn't get shot until after Kipling had left, is that right?

That's right.

What I want to know is, Did Kipling turn around at the point where you say you got shot, or about there? Mr. Knoblock: I object.

The Court: He said he did.

Q. Did you stop there, or did you go on down below the tavern?

Mr. Knoblock: I object; asked and answered two or

three times before.

The Court: What is the question? (Question read by the reporter.)

The Court: Below where Kipling stopped?

He said he did.

You stated that when Kipling left, or about the time Kipling left, you heard a commotion over at the train. What was that commotion?

A. I heard steam blowing out there, and it

sounded to me like shots.

That's all you heard?

That's all.

How many men were up on the bank at the time you heard the commotion?

I couldn't say as to that.

What is your best judgment?

A. It only-Well, I really couldn't say as to that. Inmy best judgment I saw one or two men there.

Who were they?

A fellow that lives right there. A.

Who were they?

I don't know them. Do you know anybody else connected with the strikers there except you and Gimming and Brewster?

No.

At that time?

At that time only Totten and Lucas. They was gone.

They were the only ones that were there?

Mr. Knoblock: I object.

Mr. Heyl: I wouldn't ask him to tell anything he didn't

I want to know the names of the men you saw

there along that bank.

Mr. Knoblock: I object. He answered it three or four . times.

The Court: I think he didn't see anybody there except those people.

Mr. Hevl: All right, if that is the way they want

1204 to leave it. That's all.

Mr. Knoblock: We are asking the court if Mr. Dilley

can be excused from further attendance because of what the doctor said.

The Court: As far as I am concerned.

Does the plaintiff have any desire for this defendant to remain?

Mr. Heyl: No.

The Court: You may be excused.

1205 H. E. COLE, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. H. E. Cole.

Q. And are you one of the defendants in this case?

A. I am.

And were you present in court when Adolph Rinck testified in behalf of the plaintiff?

A. Yes, sir.

Were you present on either December 29 or 30 when Adolph Rinck approached the picket line with his truck?

A. On the 29th.

And I will ask you if you said this, or this in substance to him: "You can't go through with that truck. You said you wouldn't bring it back?"

That's right.

Did you tell him he couldn't go through?

I did not.

Mr. Heyl: I object to the leading form.

He said he said it.

The Court: It is leading.

What was the conversation you had?

He pulled up there and stopped, and I said to him, "I understood you wasn't going to bring the truck back in this aftermoon."

Q. What else happened, if anything?

1206 A. He said he called his local in Chicago, and they told him to go ahead. I said, "If your local said so, you had better do as they tell you."

Q. Did you make any endeavor of any kind or char-

acter to stop him? A. I did not.

Q. Did you threaten him in any manner or form, by language or threats or stones or anything else?

A. I did not.

Q. Is that the only time you have been mentioned by any witness?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. Who were the other people that were there at that time?

A. I only remember of one, and that was William Lord. He drove out there with me.

Q. What was he doing there?

A. On picket duty.

Mr. Knoblock: I object. He is not a picket.

The Court: I suppose that is what he was doing there.

Q. What was he doing there?

A. On picket duty.

Q. Now, did you see Mr. Rinck on the following day!

A. No, sir.
Q. Were you there the second day, December 30!

A. No. sir.

Q. And was there anyone there except you and the other man you have mentioned as a picket?

1207 A. There was several around there, but I couldn't say as to who they were.

Q. Were they former employees of the railroad?

A. There was two or three others I remember of on picket duty:

Q. Who were they?

Q. Were there any there who were not on picket duty!

A. Not that I know of.

Q. Then there were five or six there altogether of those pickets?

A. There was about five, as I remember.

Q. This was at 3 P. M. on December 29, 1941?

A. Right near that time, yes, sir.

Q. You stopped his truck, didn't you, by getting out in front of it?

A. We were parading across.

Q. Just answer my question. You stopped the truck by getting out in front?

Mr. Knoblock: Let him answer it in his own way.

The Court: Answer whether it stopped.

No, we didn't stop it.

You got out in front of it, didn't you? I say we were walking across the road.

Didn't you get out-

Mr. Knoblock: That is an answer.

Mr. Heyl: I have a right to an answer to that question. The Court: Whether you stopped, or asked him to

We did not stop it.

You were in front of it when it stopped?

I was not.

Some of the others were?

I wouldn't say what other people were doing. was not.

Were some of the rest in front of him?

I couldn't say.

Couldn't you see?

Mr. Knoblock: He said he didn't know.

I do not know.

Could you see the other men while you were there? A.

Did you see any of them in front of it?

A. No.

Q. Where were they.
A. They were moving around. How wide is that driveway?

A. Oh, I would say fifteen, twenty feet.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1209 FRANK W. LUCAS, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to:

Direct Examination by Mr. Knoblock.

Will you state your name?

Frank W. Lucas. A.

And you have heretofore testified in this case, have Q. you?

A. Yes.

Q. Now, are you one of the defendants in this case?

A. Yes.

Q. Directing your attention to—Were you in the court room when Mr. Sweet testified in behalf of the plaintiff?

A. Yes.

Q. And you heard him detail a certain conversation that he stated took place between himself and Mr. Chandler in the Union Station in this city?

A. Yes.

Q. I will ask you this: Did you hear Chandler say this, or this in substance, to Mr. Sweet on that occasion: "You had better not ride that train west. If it goes out, it won't get to Hollis!"?

A. No.

Q. Did you hear Mr. Chandler give him any kind of threatening conversation in any manner or form on that occasion?

A. No, sir.

Q. Later, on the outside of the platform, did-you hear George Kneisley say the same thing to him, or that in substance?

A. No.

Q. Now, the fact of the matter is that day what 1210 did you and Mr. Kneisley do with Mr. Sweet?

A. He gave us his promise that he wasn't going to pilot no more jobs, so we took him to the picket line to get his automobile.

Q. Who took him over there?
A. George Kneisley and myself.

Q. How far was that trip?

A. That was from the Union Station to the head of the lane as you go into the yards.

Q. And referring to the date of January 2, 1942, I will ask you where you met Leo Totten that morning.

A. At the Union Station,

Q. At about what time of the day was that?

A. Well, as near as I can recall, it was around 8:30. Q. And was there anyone else with you and Mr. Totten

on that occasion?

A. No. Q. Where did you and Mr. Totten proceed to?

A. We proceeded down Washington Street to Hollis, as I stated before.

Q. And what was your purpose in going?

A. Well, we had word that Funk was going to be on that engine, and that him and Gifford had an argument as to

who was going to be the next pilot, and we wanted to be spre which of the two was on the engine.

Q. Was that for information purposes?

A. It was.

Q. About what time—Describe what you and Mr. Totten did as you got down in the vicinity of Hollis, every-

thing that happened there.

A. We went to Hollis and turned around and, as we was coming back, we saw the train coming. At this one place we got out, and I saw who was running the 1211 engine.

Q. How far did you leave the car?

A. I didn't leave it at all; just stepped on the running board.

Q. Did Mr. Totten get out of his car at any time?

A. No.

Q. Could you tell who was running the engine?

A. As far as I could tell, it was Gulick. I recognized

him by that shirt he had on the other day in court.

Q. Did you at that time throw any bottle or bottles filled with benzine or any inflammable fluid of any kind or character into the cab of that engine?

A. I did not.

Q. Did you throw anything at that time?

A. No.

Q. Of any kind?

A. I didn't throw anything.

Q. Did you see Mr. Kipling there that day?

A. I did.

Q. Where did you see him?

A. He pulled up facing us.

Q. And what did you see him do, if anything?

A. He was stopping his car, practically stopped, and was bringing his sawed-off shotgun up.

Q. What did you and Mr. Totten do then?

A. I got in the car, and we drove off.

Q. And where next did you see Mr. Kipling?

A. The next I saw him was on Adams Street about a couple of doors south of Western Avenue.

Q. What, if anything, occurred there?

A. He made quite a scene there.

Q. Tell what happened. He pulled up alongside—

Mr. Heyl: That was told before.

The Court: He can testify in his own behalf.

A. He pulled alongside and jumped up like a mad man and pulled his shotgun up and said, "Say your prayers, I am going to kill you right here."

How many times did he say that?

A. I would say at least twenty, What did he say to Mr. Totten?

He said, "You, too, Jack. You're in a hell of a mess yourself." I will just finish you off, too."

Q. What did you do? What did you see with reference to him holding be gun? What occurred there?

A. He was nolding the gun pointing right at me.

What was he doing?

He had his finger on the trigger, and he was snapping that safety on and off.

Did he appear to be angry?

He sure was!

And about how long did you remain there before the police officers came?

Well, in my best judgment it was around twenty-

five to thirty minutes.

What did you observe Mr. Kipling do while you, were there with reference to attracting the attention of anyone?

A. We sat there probably twenty minutes, and here come a police car down Adams Street. They drove up

1213 to Western Avenue and saw some girls. I don't know what he thought but, anyway, he turned off Western Avenue, and Kipling waved that shotgun around through the air, trying to attract their attention.

Q. Did they stop? A. No, they did not.

You were later taken where?

A. Taken to the City Hall.

Q. On the occasion that Mr. Kipling referred to on the date of January 2, 1942, at the Elm Grove Tavern at Hollis while you and Mr. Totten were there, I will ask you if you saw any rocks thrown by anyone or any shots?

No, not when we left there there hadn't been a thing

happening.

Mr. Knoblock: I think you may cross-examine.

Cross-Examination by Mr. Heyl.

- Q. Whom did you see down there near this Elm Grove Tavern ?
 - I didn't see anyone I recognized but Kipling. A.

Q. Did you see any other cars?

Oh, there was cars. A. Did you see Dilley?

A.

Did you see any other strikers down there? Q.

A.

- Did you see any men standing along the bank of the Q. road?
 - There was nobody standing on the road. A.

Q. Nobody at all?

A. No.

Q. Anybody running along there?

A. No.

And where was the engine when you left? A. They was still going when I left there.

Where were they with reference to the Elm Grove Tavern?

A. They was south of the Elm Grove Tavern.

How far south?

I couldn't say as to that. A.

Where did you stop your car and wait for this train?

A. We didn't wait for it. We met it.

Where did you stop your car? We met the train and we stopped, and I got out and looked to see who was running the engine.

You stopped before the train reached you?

No, we pulled up just as we met the train and stopped.

Where did you stop your car on the road with reference to Elm Grove Tavern?

It was a little south of Elm Grove Tavern.

Q. It was right nearly in front?

A. I didn't pay any attention to Elm Grove.

Q. It was in front, was it? A. Somewhere near it,

Will you look at the photographs that have been offered in evidence in this case, and state if you can identify the place where you stopped your car?

A. Yes, we stopped near there.

Q. All right! Which picture are you looking at?

A. I.looked at all of them.

Q. Any particular picture that shows the place where you stopped your car?

A. This one here (indicating). We stopped along in

here some place.

Q. That is the picture marked "Plaintiff's Ex-

· A. I couldn't say just exactly where we stopped.

Q. You stopped some place—
 A. Somewhere near in this picture here.

Q. -some place that is shown in the picture along the

railroad, is that correct?

A. I couldn't say it was in this exact picture. I said somewhere in the near vicinity.

Q. How near?

A. I couldn't say as to that. I never measured it off.

Q. Do you recognize the tracks there along that picture?

A. Yes. That track runs some distance along that way there.

Q. You stopped on this shoulder of this road, did you not?

A. No, not on that shoulder; somewhere in the vicinity of there.

Q. How close did you stop to the mail box?

A. I couldn't say as to that. I never saw the mail box.

Q. Did you see the guard rail?

A. Yes, we saw the guard rail. Q. How close to the guard rail?

A. I couldn't say. Q. How many feet?

A. I couldn't say.

Q. Were you north or south of the guard rail?

A. This side (pointing).
Q. The Peoria side?

Q. The Peoria side?

Q. How far?

A. I couldn't say as to that.

Q. Haven't you any judgment at all?

1216 A. No, I never paid any attention except being there.

Q. Did your car stop on or off the pavement?

A. I think two wheels were on, and two wheels were off.

And you were out of the car, and Totten was in the car?

That's right. A.

Did Kipling come up before you stopped? Q.

A. No.

Q. He came up after you stopped?

We was sitting there. We had stopped. A.

And you were out of the car? Q.

When he drove up, yes. A.

You were just getting back in the car when he drove Q. up?

No. I wasn't. I was standing at the door when he A. drove up.

You were ready to get in?

I recognized his car with the spotlight. I looked a. little closer, and there Kipling was.

Q. You were ready to get in the car when you first saw him?

When I saw him I got in the car. I don't know as I A. was ready to get in.

And you left immediately? Q.

A. Yes.

And he turned around and followed you? Q.

A. He must have.

Q. Did you see him turn around?

A. No, I didn't see him turn around.

Did you see anyone throw anything at that train? Q. No, I told you awhile ago nothing had happened A. when we left there.

Did you see anything thrown at the train at the Allied Mills?

A. We weren't at the Allied Mills.

1217 Were you passing there?

We passed there probably twenty to thirty minutes before they ever got there.

Q. Did you see this train at the Cedar Street crossing?

Ă. No.

Q. Did you see it at the Union Station?

I don't know as I saw it at the Union Station. A.

Q. Did you stop at the Union Station?

A. I couldn't say as to that, either.

Q. Did you see it when it left East Peoria?

Ã. No.

Q. Did you get out of your car at the Union Station?

I sure did. I was talking to Louis Righter.

- Where were you when this train was at the Union Station?
- I don't know as I was there when the train was at the Union Station.

Q. Were you or not?

Not that I know of.

Did you see the train there?

No. A.

Did you see the train at any time in East Peoria?

A. No, I didn't.

Did you see it any place along the road?

No.

The train stopped at the Union Station? Q.

I don't know.

You could have found who was on the engine at the Union Station?

I didn't see it at the Union Station. A.

You could have found out there? 1218 I probably could.

Did you start out before he left?

I don't know. I didn't know there was going to be a train that day.

Q. Why did you drive to Hollis?

To see if there was a train.

You weren't going down, as you stated in direct examination, to see if Funk was on the train?

That's right. That is why we was down there.

If you didn't know there was to be a train, why did you go down? That is the way you are trying to fix it now. Mr. Knoblock: I object.

I am trying to tell you the truth.

You didn't know this train was going out that day?

Not for sure. A.

Q. You could have found that out in East Peoria?

Mr. Knoblock: I object.

The Court: He may answer.

Weedon't have any way of finding that stuff out.

Q. You had pickets along the line? We had them in East Peoria.

Q. Didn't you attend a meeting of the union the night before which was attended by Keiser and Coyle and union men with reference to this train going out the next day?

A. No.

Q. You didn't attend this meeting?

No.

Q. You didn't attend any meeting?

A. The day before.

1219 · Q. Were Keiser and Coyle there?

. They were present, yes.

Q. At that time the plan was made to follow this train to Hollis, wasn't it?

A. No.

Q. You are sure of that?

A. Absolutely.

Q. Did you talk about it?

A. No.

Q. Talk to anybody about following that train?

A. No.

Q. . So your purpose in going down there, then, was to find out if Funk was on a train you didn't know was going out?

A. That's right.

Mr. Heyl: That's all.

The Court: Anything else?

Mr. Heyl: I want to ask one more question.

Q. As I understood you to say, Mr. Kneisley—or Mr. Kipling—when he stopped you at Washington Street and Adams Street had this gun and said twenty times or more, "Say your prayers, I'm going to kill you"!

A. Do you want me to tell you what he said?

Q. I am asking you to answer my question.

A. He sure did.

Q. Is that what he said?

A. Yes.

Q. Did you make any protest to anyone about his stopping you at that time?

A. No, I didn't have any chance.

1220 Q. You were there twenty-five minutes, were you?

A. How are you going to get out of a car? I am trying to answer your question.

Q. Did you try to get out of your car?

A. No.

Q. Did you make a protest to the police officers when they came there you were stopped by a man that had no right to stop you!

A. I did not.

Q. Did you make any protest at all?

A. No.

Q. You knew you were guilty, and you didn't make any protest?

A. No, I wasn't guilty of nothing.

Q. You never complained of Kipling to bystanders or police officers that this man was restraining you on the road without any right?

A. No, he was putting on a show himself.

Q. When the officers got there, he wasn't putting on any show?

A. He sure was.

Q. What did he do when the officers arrived?

A. "Take these men in."

Q. Did you say to those officers, "Why are you taking these men in?"

A. No.

Q. You never said anything, is that right?

A. That's right.

Redirect Examination by Mr. Knoblock.

Q. Why didn't you get out of your car down there!

A. The man was waving that shotgun down there, pointing it in my face, and saying he was going to kill me, so I sat right in the car.

1221 Q. From his actions and his attitutde, were you in

any fear for your life?

A. Yes.

Mr. Heyl: Objected to as asking for a conclusion.

The Court: He answered, said he had.

Mr. Knoblock: One question I forgot to ask on direct.

May I have the privilege of asking that now?

The Court: Yes.

Further Direct Examination by Mr. Knoblock.

Q. On this occasion near the Elm Grove Tavern did you at any time there slap your hands on your knees and laugh?

A. No.

Mr. Knoblock: That's all.

The Court: Is that all? I think we will take a ten minute recess.

(Recess.)

1222 LOREN VERN JOHNSON, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. Loren Vern Johnson.

Mr. Heyl: I want to object to this witness testifying. He has been in the court room during the testimony of some of the witnesses.

Mr. Knoblock: That is not true.

The Court: We can find out quickly. Have you been in the court room during the trial?

A. I sat down; not during the trial. Mr. Heyl: He was here this morning.

Mr. Knoblock: He was not.

The Court: Were you here this morning sitting while the trial was going on?

A. No. sir.

The Court: Did you hear any witnesses testify?

A. No.

Mr. Heyl: I was informed he was.

Mr. Knoblock: I tried to call him. He wasn't in the court room.

Q. Where do you live, Mr. Johnson? A. I did live at 3123 South Adams.

Q. Did you live there on January 2, 1942?

A. That's right.

Q. Drawing your attention to that date of January 2, 1942, at about 9:30 A. M., I will ask you if your attention was drawn to any incident there on that occasion.

A. It was, yes.

Q. And how was your attention drawn to it? A. Well, by loud talking and vile language.

Q. And what did you do?

A. I opened the window to see what was going on.

Q. What did you see and hear there?

A. Well, I saw a man stop a car there, had a shotgun out in front of it walking in front of the car.

Q. What was he doing with the shotgun!

A. He had it like he was going to shoot a rabbit.

Q. What did he say, if anything?

A. He said, "I'll blow your damned head off."

Q. How many times did you hear him say that?

A. Oh, probably four or five.

Q. Four or five times, you mean?

A. Yes.

Q. Did you hear him make any other statements to anyone there?

A. Yes.

Q. What!

A. There was a South Adams street car coming, and he was ringing his bell to go. He said, "Damn you, just sit there."

Q. And which man said that?

A. Mr. Kipling.

Q. He is the man with the gun?

A. Yeah.

Q. Can you recognize any of the men here in this court room that was in that car that morning?

A. Well, there's one right there (pointing).

1224 . Q. Will you come down and point him out to us!

A. Stand up there!
The Court: Let him stand up.

Mr. Knoblock: Stand up, Mr. Lucas. (Person named rises.)

Q. Is that the man?

A. No, that wasn't the man with the gun.

Q. Was this man in the car?

A. He was in the car, yeah.

Q. Did you know any of the parties in that altercation down there prior to that occasion?

A. No.

Q. Have you ever been employed by the T. P. & W. or any road affiliated with it?

A. No, sir, no railroad.

Q: What is your business?

A. Barber.

Q. Have you any interest whatsoever in this law suit!

A. No.

Q. Were you subpoenaed to come here?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. Where do you work?

A. 1409 Lincoln.

Q. How long did you live at 3123 South Adams Street!

A. Oh, I lived there about six months.

Q. Did you live in the house as a tenant, or were you there as a roomer?

1225 A. I lived there with my sister.

Q. Your what?

A. My sister.

Q. Was she the tenant?

A. She had the apartment, yes.

Q. I see. When did you move away from there?

A. Last Sunday. Q. Last Sunday?

Q. Last A. Yes:

Q. Where did you move to? A. Idaho and Park Avenue.

Q. Where do you barber?

A. 1409 Lincoln.

Q. You work for somebody there?

A. Mr. Galles, yes.

Q. How long have you worked there?

A. How long have I worked there? About three months.

Q. And do you know any of these defendants in this case?

A. No, sir.

Q. And do you know Mr. Kipling?

A. No, sir.

Q. How did you happen to say in your direct examination that you saw Mr. Kipling there?

A. I read it in the paper, and saw the man with the

shotgun.

Q. I see. And you concluded that you saw Kipling? Will you tell us what kind of a looking man he was?

Y. Yes, he had boots on and an overcoat.

Q. Boots? You are sure of that?

A. He had boots on, laced boots.

1226 Q. How tall was he?

A. I imagine about five, eight.

Q. He was a blonde?

A. I didn't see his hair. He had his cap on.

Q. You couldn't tell that?

A. No.

Q. How close were you to this place?

A. Just across the street.

Q. How wide is the street there?

A. How wide is Adams?

Q. I am asking you. I am not testifying. I am asking you.

A. Well, what is the width of a street?

Q. Is that the best judgment you have as to distance? You can't tell the distance of South Adams Street? The width of it?

A. I would say about forty feet.

Q. Forty feet?

A. Yes.

Q. And were they on the east side of the street?

A. They were on the lower side, whatever you call that.
Q. That would be the side beyond the center of the

street, is that right?

A. Where they should park on the right side going up

Adams.

Q. The street car tracks are there on that side of the street, are they?

A. They are in the middle. Where are they?

Q. In the middle?

A. Yes.

Q. Did this street car pass?

A. No.

1227 Q. It stayed there?

. Not until the police come.

Q. And it was a South Adams street car, was it?

. That's right.

Q. Did you ever recite this story to anybody?

A. No, sir.

Q. At no time! Did you tell the authorities you saw it!

A. No, I didn't tell nobody. They come and served a subpoena on me.

Q. You moved away last Sunday!

A. That is right; yes.

Q. When did they serve the subpoena on you?

A. This morning,

Q. They found you all right, did they?

A. That's right.

Q. Did you tell anyone down there at all you had seen this transaction?

A. Yos, I told-

Q. This lawyer here,-

A. Right there (pointing).

Q. -Mr. Knoblock? You told him out in the hall during the last recess, didn't you?

A. Told him what?

Q. Told, when you went out with him in the corridor of this court house, what you have testified to on the witness stand? Is that what you mean?

A. No, I am only going to tell you the truth.

Q. I know you are willing to do that, but I want to know: When did you tell Mr. Knoblock what you would tell here!

1228 A. He talked to me out in the hall.

Q. This morning?

A. No, not this morning. He didn't pick me up. He didn't serve a subpoena on me until 10:30.

Q. Who served it on you?

A. I don't know.

Q. Did they serve it on you after you came up here?

A. Mr. Arends:

Q. Where did he serve it?

A. At my house, 401, Park Avenue.

Q. This morning after we took a recess, the last recess and immediately before you took the witness stand, you were seated on the left side of this court room in the front seat?

A. That's right.

Q. And Mr. Knoblock got up and asked you to come out?

A. That's right,

- Q. And in the presence of Mr. Lucas, this man you identified, and Mr. Knoblock you talked to him about this case?
 - A. I didn't talk to anyone only the lawyer.

Q. What did you tell him?

A. Only what L saw.

Q. That is what you told him?

A. That's all.

Q. You never told a living soul about it before you talked to him?

A. Only to my family what I saw:

Q. That was in your home? You didn't tell it to the police officers or anybody that would communicate it to the defendants in this case?

A. No, sir.

1229 Q. Did you go out in the street that morning?

A. No, sir.

What were you doing when you heard this noise!

It woke me up.

You were in bed!

Yes.

Q. Do you work nights? A.

No. I work afternoons. You sleep in the morning, is that it?

Yes, sir.

You were asleep in your room and you heard this, and you got up and went to the window?

A. Three rooms.

You went through three rooms?

. Their three rooms.

Do you sleep in all three of them?

No, I don't sleep in all three of them. What about the three rooms there? What about the

three rooms there?

A. There is a bedroom, living room and kitchen and a bedroom.

Right in a row?

All in a row, that's right.

Q. And you got out of bed and looked out of the win-

dow, and looked out of the rest?

I got out of my bed and went in the kitchen, raised the window. I heard that commotion. I heard all that "crap" out there on the street.

That's what you thought it was?

A. Yes. What would you think?

The Court: Proceed.

A couple of kids out there with a man with a shotgun. What are you going to do, with them? Scare them to death?

Did the men get out of the car?

A. No. sir.

Did you stay in the window there watching the entire

proceedings ?

I stayed there until the police come. I heard him tell them, "Call the police," and he said, "God damn. Someone call the police."

They called the police?

Yes, finally.

Q. And you stood there in the window all that morning?

A. Yes.

It was about 10° below zero?

Was it a warm day? . Q.

It wasn't so damn cold.

The Court: None of that language in here.

Remember that! Go ahead!

Q. It was quite a warm day that day, wasn't it?

Oh, it wasn't so warm,

You stood there in your night clothes with the window up until this police officer came?

Mr. Knoblock: I object.

Is that the way we understand you? I want to know: Will you answer the question?

What is it?

The Court: Did you stay there until the police came? A. Yes.

Q. And you stood there with the window open? A. That's right.

Was anyone with you?

Yes.

Q. Who was with you?

My brother-in-law and sister.

They stood there, too, did they?

That's right.

Mr. Heyl: I think that's all.

The Court: Anything else with this witness?

Mr. Knoblock: That's all.

Your name has always been Loren Vern Johnson?

A. That's right.

Mr. Knoblock: That's all. You may leave (to witness).

1232 A. R. OVERACKER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Will you state your name?

A. R. Overacker.

Q. And are you one of the defendants in this case!

A.

Were you present in the court room when Adolph Rinck testified on behalf of the plaintiff?

Q. And did you say to Adolph Rinck this, or this in substance, when he came to the picket line with his car, "You can not pass"!

A. I didn't talk to the man.

Q. Did you hear anyone else talk to him on that occasion?

A. I didn't happen to be there.

Q. You were not even there, is that right?

A. No.

Q. Have you been mentioned by anyone else testifying for the plaintiff in this case?

A. I believe I was in the picture.

Q. In the picture?

A. Yes.

Q. I am handing you what has been marked as "Plain tiff's Exhibit 1." I will ask you which man you are in that picture, reading from the left toward the right.

A. Fourth.

Q. And what, if anything, do you have in your hand? A. A strike sign.

1233 Mr. Elliott: Talk up.

A. A strike sign. Mr. Knoblock: I think that is all.

You may cross examine.

Cross-Examination by Mr. Heyl.

Q. You are the one that's leaning on the strike sign!

A. Well, if you would call it leaning.

Q. The fellow that was grinning, with the strike sign in front of him?

A. Yes, that's it.

Q. You recognize the other persons in the other picture, do you not?

A. Most of them.

Q. And that was taken at what point?A. Well, right there next to the bridge.

Q. What bridge! A. The bridge next—

Q. The Nickel Plate crossing?

A. No, next to the Illinois Terminal.

Q. The Illinois Terminal bridge?
A. Illinois Terminal bridge.

Q. That is the entrance to the freight house? Isn't that that road?

A. Well, the entrance is, oh, I would call it a little bit west of there.

Q. This was the picket line for the freight house, wasn't

it?

A. Yes. Yes, it was.

Q. You recognize all of these men, do you?

1234 A. ∠I do most of them, yes.

Q. They are all defendants in this case, are they not?

Mr. Knoblock: I object to this.

The Court: Objection sustained. I don't suppose he knows.

Q. Do you know the two men at the end on the left side of the picture?

A. I couldn't try to identify them. I might be wrong.

Q. What is your best judgment?

A. I don't know.

Q. Have you any judgment?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Who are the two on the other end?

A. I can't answer that. Mr. Heyl: That's all.

Mr. Knoblock: That's all.
Mr. Knoblock: That's all.

1235 OLIVER W. KIRK, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. Oliver W. Kirk.

Q. Are you one of the defendants in this case?

A. I am.

Q. I will hand you one exhibit admitted in evidence here as Plaintiff's Exhibit 1, and will ask you if you appear in that picture.

A. I do.

Q. Are you standing or sitting down?

A. I am sitting down.

Q. And what, if anything, do you have on your shoulder?

I have a shillalah on my shoulder.

Mr. Heyl: What?

Mr. Knoblock: "A Shillalah," he called it.

Explain, if you can, how you happened to have it

there.

Well, there was a bunch of us gathered around the A. fire there, and a newspaper man came along and wanted to know if we would pose for a picture, and we didn't see anything wrong in having our picture taken, so we said we would, so he said, "Well, gather over here in a bunch, I will-where I can snap your picture, and I'll take it," so we all gathered over there close to the fire, and I had my foot up on the end of the bench, and he said, "Some of you fellows go sit on the bench," so I sat on the

bench, and Bill Christoff said, "Look like Allep Aop." 1236 He said, "Get that Alley Oop club on your shoulder."

so I put the club on my shoulder.

At that time did you threaten anybody with this club, or menace anyone in any way or form?

A, .I did not.

Did you throw any rocks or missiles of any other kind or character?

A. No, sir.

Do you recall the occasion on December 29, 1941, when William A. Grafelman came to the picket line and stopped his truck, and conversed with Mr. Stetler?

Yes, I remember him stopping there.

Q. Did you hear, Mr. Stetler say this to him, or this in substance: "If you get a special agent, we will upset the truck"?

A. No, I didn't hear him say that,

Did you hear any threats of any kind or character there made by Mr. Stetler or anyone else?

A. No, I didn't.

You were present on that occasion?

A. I was present.

Did you hear Mr. Stetler or anyone else say to Mr. Grafelman, "We won't let you through"?

No. I didn't.

Did you see anyone at that time make any threat to Mr. Grafelman, either by language or conversation or by striking with a club or waving a club or throwing any missiles or stones or rocks of any kind or character?

A. No, there wasn't nothing like that.

Q. Are these two cases I have interrogated you 1237 about the only two cases in which you have been referred to in this testimony?

. Yes, sir.

Mr. Knoblock: You may cross examine.

Cross-Examination by Mr. Heyl.

Q. Did you ever throw a stone at one of these trains?

A. No, sir.

Q. Were you down at the Elm Grove Tavern on January 2?

Mr. Knoblock: I object to this. The Court: He may answer.

A. No, sir.

Q. You weren't down there?

A. No, sir.

Q. Were you on the road to Hollis?

A. No, sir.

Q. On that day or any other day during this strike? A. Not that I recall.

A. Not that I recall. Q. What's that?

A. Not that I recall.

Q. You would recall, wouldn't you, if you were down there?

A. I have been out on that road, but not recently.

Q. Were you on that road any time after December 28, 1941, and prior to Sunday, January 4, 1942!

A. No, sir.

- Q. And did you throw any stones at the train near this picket line that's shown in the picture, Plaintiff's Exhibit 1?
 - A. I would have to have an awful strong arm.

Q. Just answer my question.

A. I did not.

1238 Q. Did you see anyone ever throw a stone at the train?

Mr. Knoblock: I object to that. The Court: Objection sustained.

- Q. Now, was the club that you have termed "a shillalah" that you have over your left shoulder trimmed off at the end for a handle, the same as the one Mr. Grimming has?
 - A. No, that club was broken off on the end.

Q. The one that Gimming has is trimmed off so you have a handle there, isn't that right?

A. Mr. who?

Q. The one that Gimming has in his hand.

A. Gimming isn't even in this picture.

Q. Who is the other man in the picture with the club standing up?

A. Well, I don't exactly know his name.

Q. One of the strikers, isn't he?

A. He is one of the strikers.

Q. You notice the club he has, do you not?

A. Well, there are three clubs here. Which one do you mean?

Q. The man right across from you near the strike sign that has the club in his right hand. That shows that club is trimmed off for a handle, isn't that right?

Mr. Knoblock: I object. The picture speaks for itself.

The Court: He may answer.

A. I don't know as it was trimmed off.Q. Was your club trimmed off that way!

A. No, sir, mine was broke off.

Q. Where did you find the club you have in your hand!
A. Under the bridge.

1239 Q. And where did the other club come from?
A. That came from under the bridge.

Q. Were you on picket duty at that point each day during the strike?

A. No, sir.

Q. Were you on picket duty at some other place?

A. I was on picket duty at the P. & P. U. junction and at the viaduct.

Q. At the Nickel Plate crossing?

A. Yeah.

Q. When were you on picket duty at the Nickel Plate

Mr. Knoblock: I object.

A. It wasn't under the Nickel Plate. It was under the 150 viaduct.

The Court: I think he may answer.

Q. The picket line was there near the Nickel Plate crossing, wasn't it!

A. It was right below the viaduct.

Q. When were you on picket duty there?

A. Well, I don't remember exact dates. I was on duty there two days.

Q. And during the time you were there, trains passed, . did they?

A. Yes, sir.

Mr. Heyl: That's all. Mr. Knoblock: That's all.

The Court: That's all. Call the next witness.

1240 C. H. KIRK, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Knoblock.

Will you state your name?

C. H. Kirk.

And are you one of the defendants in this case?

I will now hand you what has been marked for the purpose of identification "Plaintiff's Exhibit 1", and I will ask you if you appear in that photograph.

I will ask you if you have anything in your hands in that picture?

I have not.

On the occasion of taking that picture, I will ask you if you at that time threatened anyone with any language or conversation, or if you threatened them with a club or missiles or rocks of any kind or character.

A. I did not.

Now, referring to December 29, 1941, when Mr. Grafelman came to the picket line and Mr. Stetler just / conferred with him, do you recall that occasion?

A. Yes, sir.

I will ask you if you heard Mr. Stetler or anyone else say to Mr. Grafelman there on that occasion, "If you get a special agent, we will upset the truck"?

I didn't hear Mr. Stetler say a word to Grafelman.

I was standing on the other side of the truck.

Q. You were there on that occasion? A. Yes. 1241

Did you make any threat of any kind or character to Mr. Grafelman?

A. No, sir, never had any conversation with him at all.

Q. Did you hear anyone else say this, or this in substance, to Mr. Grafelman: "We won't let you through"!

A. I did not.

Q. Are those the only two occasions that you have been mentioned by the plaintiff's witnesses in this case?

A. It is.

'Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. You were across the other side of the truck from the man-

A. Yes, on the east side.

Q. You were too far away to hear what was said, were you?

A. Yes, sir.

Mr. Heyl: That is all. I move to strike the direct examination because the witness said he was too far away and couldn't hear it.

The Court: I think the latter part may be. Who is this

man Grafelman?

Mr. Knoblock: Storekeeper.

Mr. Elliott: Driver of this truck.

. The Court: Not the original truck carrying products?

Mr. Knoblock: No, that was Mr. Rinck.

The Court: I think I remember the testimony.

The latter part of the testimony may be stricken, that
he could have heard it if it had been said.

CLINTON STETLER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to:

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. Clinton Stetler.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. I am directing your attention to December 29, 1941, on the occasion when William A. Grafelman approached a picket line where you were on duty. I will ask you if you recall that occasion.

A. Yes, sir.

Q. Did you converse with Mr. Grafelman there at that time?

A. Yes, sir, I talked to him a few minutes.

Q. 'Did you say this to him, or this in substance: "If you get a special agent, we will upset the truck"!

A. I did not.

Q. Did you say to him, "We won't let you through"?

A. I did not.

Q. Did you hear any one of the other members on the picket line at that time threaten him with any oral statements or conversation or with any clubs, missiles, stones, rocks, bricks or anything else?

1243 A. No, sir.

Q. Did he go through?

A. No. sir.

Q. Is that the only time that you have been mentioned in this case?

A. Yes, sir.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. Mr. Stetler, where do you live?

A. In East Peoria.

Q. And before this strike where were you employed?

A. As a fireman.

Q. Fireman? A. Yes, sir.

Q. On the day in question, you were on the picket line near the freight house with O. W. Kirk and C. H. Kirk, John J. Gimming and K. A. Feldt, were you not?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Were there any other persons there?

A. I think there was a man there by the name of Tracy.
Q. And you men stepped in front of this truck when

Q. And you men stepped in front of this truck when he drove up, didn't you?

A. We were standing in the road but, when the truck come up, we spread apart:

Q. He came to a stop, didn't he?

A. Yes, he came to a stop.

1244 Q. And you came over to the door and asked him where he was going?

A. Yes, sir.

Q. And he'told you he was going to the freight house?

A. Yes, sir.

Q. And then you asked him if he had material that was to be delivered in there?

A. I believe that was said in the conversation, yes, sir.

Q. He told you he had nothing to deliver, but that he was to pick up material consigned to the stock department in the yards?

A. As far as I know, that was the conversation.

Q. Then you turned and talked to the rest of the pickets, didn't you?

A. No, I don't believe I even moved away from the side of his truck.

Q. Did you say something to the pickets then?

A. No, sir, I did not.

- Q. Then you said to him, did you not, "We might as well let all of the rest of the transfer trucks in if you let him in"?
 - A. I don't recall making that remark. Q. You won't say you didn't say it?

A. I say I don't recall making that remark.

Q. And then you said that, in view of that situation, you would not let him go on?

A. No, sir, I didn't make that statement.

Q. He didn't go through, did he?

A. He did not.

Q. He turned around and went back?

A. He turned around and went back, yes, sir.

Q. That is what happened? He turned around and went back?

1245 A. He did not go through the picket line, no.

Q. Was it some other man that made some statement to Mr. Grafelman there that day?

A. No, sir.

Q. You are the only one that said anything, is that right?

A. As far as I know, yes, sir.

Q. The others were not there close to you?

A. They were standing in the vicinity, oh, maybe six or seven feet, something like that.

Q. Some of them were on the other side of the truck?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1246 WALTER McMULLEN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. Walter McMullen.

Q. Are you one of the defendants in this case?

A. Yes, sir.

- Q. Now, drawing your attention to the Merrill incident that occurred at the north end of the lane, of the T. P. & W. lane leading to their yards, on what day were you there when that occurred? Was that on December 30, 1941?
 - A. That was on December 30, 1941. Q. About what time of the evening?

A. Well, it was getting dark. It was between 5:15 and

5:30, possibly 40—5:40.

Q. Now, do you recall when Mr. Thompson drove his car out there that evening?

A. I do.

Q. Will you tell us what happened?

A. He came up out of the lane, run right through the state "Stop" sign, right out on the hard road, and a truck hit him in the side on the left side of his car. It was a two-door car, and it caved the door in, and his front wheels wound up on the north side of the slab across the hard road.

Q. After the accident, what did the truck do?

A. The truck backed away so he could turn his car out on the north shoulder, and he pulled down almost to 1247 the cemetery entrance, and the truck pulled up to the north side about just below where he hit him.

Q. About how far apart were they?

A. I would say between seventy-five and a bundred feet.

Q. What did Mr. Thompson do then?

A. He got out of his car and went back to where this truck was.

Q: What did you do, if anything?

A. I was standing by the fire at the picket line there at the head of the lane, and I walked over to inspect Mr. Thompson's car.

Q. What was your purpose in doing that?

A. Why, just out of curiosity to see the extent of the damage.

And what happened there?

A. I opened the car of the door.

Door of the car?

- Door of the car. I had a lantern in my hand, it was dark, and, as I opened the door, out jumps Zeno Merrill like there was somebody behind him, like a rabbit coming out of his hole.
- .Q. Did you or Todd or anyone else around there on that occasion order Merrill out of the car?

A. I did not.

Q. Did you know he was in there before-until you saw him coming out?

A. No.

Where were you when you were opening this door! I was standing toward the west of the door. I just reached over with my left hand and opened the door.

Was there anything between you and Merrill as he went by?

Why,-

The door of the car, I am referring to.

When the car door went open, it kind of shoved me to one side, and he come out with his arms up and started swinging his arms.

Q. Did you see who he swung at?

A. Walter Kohtz was standing behind me at that time, and I saw them make a pass at each other but, as far as them hitting each other, I couldn't say.

Did you see where he went from there?

He run across the hard road, and someone over there (I don't know who it was, it was dark), that hit him.

Q. And where did he go then?

He run over the barricade, stumbled over the barricade, and down into the ditch.

Did anyone go down in the ditch after him?

Not that I saw.

Who helped him up out of the ditch? Do you know?

A. W. E. Causey.

Q. Did you at any time on that occasion strike Zeno Merrill?

A. I did not.

Q. Or threaten him?

A. I did not.

Did you hit him with your fists at any time?

A. No, sir.

Q. Did you touch him there?

A. No, sir.

Q. Did you make any statement, verbal statement of any characer, threatening him on that occasion?

A. No, sir.

Q. Did you have anything to do with the scuffling that went on there?

A. No, sir.

of Carl W. Sund, who testified in behalf of the plaintiff that on December 30, 1941, at about 6 P. M.—I believe that also happened at the head of the lane—I will ask you—

A. What was that date again?

Q. December 30, 1941, about 6 P. M., when Sund was apparently on his way out of the yards. Did you, on that occasion, state to him this, or this in substance: "We have had about enough of this. Let's turn the car over"?

A. I did not.

Q. What did you actually do there that evening?

A. Well, some of the men were ganged up around his car that was talking to Carl. When I looked around, some of them was taking hold of the car (I don't know what they was figuring on doing, figuring on scaring him or what), but I come up and said they wasn't going to turn the car over.

Q. Did you see that he got safe passage through there?

A. Yes, sir.

Q. Was there any damage or any destruction of any kind or characer done to Mr. Sund on that occasion?

A. No, sir.

Q. Now, referring your attention to December 31, 1941, about 3:30 P. M., and directing your attention to the testimony given by Raymond Paul Avery, I will ask you if you or any of the other members on the picket line on that occasion, in your presence and your hearing, said this, or this in substance, to Mr. Avery: "We are going to get rough. Stay off of the engines and cabooses. You know what happened to the engine this afternoon"?

A. I did not.

1250 Q. Did you hear anyone else say anything like that to him?

A. No, sir.

Q. On the occasion of his going through there on that occasion of December 31, 1941, about 3:30 P. M., did you or any of the other members on that picket line that you observed there threaten Mr. Avery by conversation, by throwing rocks, sticks, clubs or missiles of any kind or character?

A. No, sir.

Q. On the same evening of the Merrill incident, referring you to the testimony of Harold E. Kipling, special agent testifying on behalf of the plaintiff, these words or this in substance—you are alleged to have said to Kipling and I will ask you if you said this, or this in substance: "You s. b., you are next", and did Kipling reply to you this, or this in substance: "I don't think so"?

A. I said nothing of the kind. I had no conversation

with Kipling at all.

Q. Did you make any threat of any kind or characer to him on that occasion?

A. I did not.

Q. Or on any other occasion?

A. No, sir.

Q. On that occasion did you hear Jerry Underwood say, "If you will get out, I will beat your head off with this lantern", or that in substance, to Kipling!

A. No, I didn't.

Q. Did you hear Jerry Underwood have any conversation with Kipling on that occasion!

A. Not in my presence.

1251. Q. Referring your attention to January 1, 1942, to a conversation it is alleged you had with a man by the name of Glavash, who has testified here on behalf of the plaintiff, I will ask you if you said this, or this in substance, to Glavash: "Stay off of the locomotives. That's a place for switchmen and firemen, and it will be too bad if you don't"?

A. I had no conversation with Mr. Glavash. I don't

even know the man.

Q. Did you have any/conversation with him on that or any other occasion?

A. No, sir, he is a stranger to me. I don't know him.

Q. Are those the only instances that you have been mentioned here in connection with this dispute by witnesses of

the plaintiff that you can recall?

A. Ali that I can recall, yes, sir.
Q. And have you at any time ever threatened, either

by words or conversation or by threatening with a club, stones, rocks, bricks or missiles of any kind or character, any of the employees of the plaintiff?

A. No. sir.

Q. Or any of its property!

A. No. sir.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. Where were you when the Thompson car approached the hard road?

A. I was standing next to the barricade at the head of

the lane.

Next to what? The barricade? What was the bar-

ricade?

A. There is a barricade along there. There is a culvert that goes through there, and there was a barricade on each side, and I was standing on the west side of the lane.

Q. Who put the barricade there?
A. I imagine the state.

Q. Were you near the picket line?

A. I was standing on the picket line.

When Thompson came up there and collided with this automobile, you said you went down to inspect his car, is that it?

That's right. A.

You weren't interested in the truck, were you! Q.

A. No. sir.

Where was the truck?

The truck pulled off on the left hand side on the north shoulder.

Q. /And he was on the north shoulder, too, wasn't he?

A: Yes, sir.

And you went down to examine his car, and you took your lantern with you?

A. I had a lantern.

You had it with you?

· A. Yes, sir.

And you looked in the car to see who was in the back seat, didn't you?

A. No, sir.

What did you open the door for?

- A. Just to see the extent of the damage.
- Q. That was the only purpose you had?

A. That's all.

- Q. Then Mr. Todd wasn't correct when he said that you and he saw somebody crouching in the back seat?
 - A. I am telling you what I saw. Q. You were ahead of Mr. Todd!

A. Mr. Todd was on the opposite side,

Q. Of what?

A. Thompson's car.

- Q. When you went up to open this door, was Mr. Todd on the same side of the car?
- A. By the time I got there, he was on the same side.

 Q. Who else was up there trying to find out how badly that car was damaged?

A. There was no one at that time.

Q. When Mr. Zeno Merrill dashed out of the car, you just stood there, did you!

A. At shoved me to one side.

Q. He shoved you to one side?

A. Yes, sir.

Q. Didn't hurt you, did he?

A. I don't think he did.

Q. Is there any doubt about it? You weren't hurt there, were you?

A. No.

Q. Then he dashed across the street, did he?

A. Yes.

Q. Did anyone go across the street with him?

A. Not that I saw.

Q. Then Mr. Todd was mistaken when he testified in this court yesterday that two men went across the street with him, is that right?

Mr. Knoblock; I object.

1254 The Court: Objection sustained.

Q. He just walked peaceably across the street?

A. I told you he come out of there like a rabbit out of his hole.

Q. Is that how he went?

A. Like a rabbit, just exactly.

Q. Did anyone follow him?

A. No, sir.

Q. When he got across there, he hurt himself?

- No, sir, a man hit him and he went down in the A. ditch.
 - Did you see him do anything to that man? Q.

He had his arms going. A. Did he do anything?

He made a pass. I couldn't see in the dark. A.

Q. Who was that man?

C. L. Brown.

- We have another man, Brown. Now-
- Mr. Knoblock: He was there all the time.
- Mr. Heyl: I know he was in the whole mess.
- Mr. Causey was there, too, wasn't he?

A .. Yes.

Did Causey strike him? Q.

A. No.

Wo struck him?

A. C. L. Brown.

Where did he strike him?

- I couldn't tell you. It was dark.
- Q. How do you know he struck him? I saw him make a pass at him. A.

Q. And Merrill went down?

1255 . . A. Merrill went over the barricade and down in the ditch.

' What did they do? .

Who? A.

These men.

A. There was only one man.

Where was Causev!

Q: A. Down at the picket line at the head of the lane.

Q. When did he come up?

A. He wasn't there.

Q. They picked him up?

A. At the entrance of the lane.

Q. They picked up Merrill?

A. Yes.

Q. A. Merrill was trying to get away?

I don't know what he was trying to do. Q. He didn't have anything in his hands?

He had his fists doubled up and his arms going. A. How many men were chasing him at the time he had his fists--

No one was chasing him.

You were there; Causey was there, and Todd. Anybody else?

A. C. L. Brown.

Q: Who else!

A. Walter Kohtz was there.

Q. Where was Walter Kohtz standing when this man rabbited out of the car?

A. He stepped aside.

Q. He didn't hit him, either, did he!

A. Not that I could see. They made a pass at each other.

Q. When Mr. Todd testified yesterday Kohtz hit him, he was mistaken?

1256 Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Was Carl Roskamp there!

A. No, sir.

Q. And how far, now, was Mr. Merrill from Thomp-

son's car when you saw these men pick him up!

A. Oh, I would say about—possibly a hundred feet, but I was over there at the entrance of the lane when they picked him up. I wasn't standing by the car when they picked him up.

Q. You saw him a hundred feet from the car when

they picked him up?

A. I didn't say that. Q. What did you say?

A. I said I walked to the entrance of the lane,

Q. How far from the car was he when they picked him up?

A. A hundred feet.

Mr. Knoblock: He said a hundred feet. Q. Was he in a direction toward you?

A. I was standing at the lane. I didn't pay much attention.

Q. Was he near you at that time?

A. Oh, possibly twenty feet. Q. Who picked him up?

Q. Who picked him A. W. E. Causey.

Q. When he picked him up, what did he do with him?

A. He helped him over to Thompson's car.

Q. He needed help to get over there?

A. He walked him there. .

Q. He needed help?

A. I imagine he did. When he went in the ditch, he rammed his head on the culvert.

1257 Q. He had his glasses broken in the melee around there?

A. I couldn't say.

Q. His face was bleeding, wasn't it?

A. Not when I saw him. I didn't take a look at him.

Q. Did you recognize Thompson's car when he came up there that evening?

A. I didn't know whose car it was until after I saw.

Herschel drive by and I saw he was in the car.

Q. And you recognized Herschel?

A. Yes.

Q. Did you recognize anybody in the back seat? A. There was no one in the back seat apparently.

Q. You were one of the men that was arrested by the East Peoria police on the charge of beating this man, were you not?

A. I was.

Q. And gave bond over in East Peoria?

A. Yes, sir.

Q. Now, you saw Mr. Sund come in the alley that night, December 30, the same night that Merrill got his beating?

Mr. Knoblock: I object to that. That is the absolute

issue, whether Merrill got any beating.

Mr. Heyl: There isn't much question.

Mr. Knoblock: There isn't much question if you believe your testimony.

The Court: Objection sustained.

Q. It is the same night the Merrill incident occurred you saw Sund in there?.

A. I saw Sund coming out.

Q. And you say the men (you meant by that the 1258 strikers) ganged up around his car?

A. They didn't gang up. They casually walked to

his car. 'He stopped of his own accord.

Q. In direct examination you stated to this court under oath you saw these men ganged around his car.

A. They were around his car.

Q. Didn't you say that?

A. If you want to call it "ganging."

Q. Didn't you called it "ganging" in your direct examination?

A. Possibly I did.

Q. You were a little offguard then?

Mr. Knoblock: I object.

The Court: Objection sustained.

You thought they were going to turn the car over? Is that what you thought?

A. I don't know what I thought about it.

Q. Why did you tell the court on direct examination you thought they were going to turn the car over?

A. I didn't say they were going to. I said it looked

like they might.

They rushed over and grabbed hold of the car?

They weren't in any hurry.

Mr. Knoblock: Objection. The Court: He answered.

O. They just walked over casually?

A. Yes.

And because you saw some men walk over casually to this ear, you thought they were going to turn it over?

A. I don't know.

Why did you tell the court on direct examination you thought they were going to turn the car over?

Mr. Knoblock: I object.

The Court: He said they might.

(Preceding question and answer read by reporter.)

You had to intercede for him, didn't you?

Not necessarily. Carl is a friend of mine, and I walked over and was going to talk to him.

Didn't you tell the court on direct examination, in direct answer to a specific question by Mr. Knoblock, you interceded for Mr. Sund?

A. If you want to put it that way. I just walked over to talk to him. We have been talking to all of the employ-

ees going in and out.

Q. Isn't it a fact you testified on direct examination you interceded for Mr. Sund?

A. No.

Mr. Hevl: That's all.

Mr. Knoblock: That's all.

The Court: By request, it has been suggested we take a recess at this time until 1:30.

Trial Recessed at 12 o'clock noon.

Trial Resumed at 2 o'clock P. M.

1260 BLANCHE GABBERT, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Blanche Gabbert.

Q. What is your husband's name!

A. Clarence S. Gabbert.

Q. Is he one of the defendants in this case?

A. He is.

Q. On December 21, 1941, where was he in the morning?

A. He was home.

Mr. Elliott: . I object to this witness testifying.

It is my understanding she has been in the court room

a part of the hearing.

Mr. Knoblock: That is true, but we didn't know Mr. Gabbert would be placed in a certain spot at a certain time.

The Court: What is it? An alibi you are trying to

prove?

Mr. Knoblock: Well, he was home there with her,-

Mr. Elliott: That is an alibi.

Mr. Knoblock: ,-and he was placed at that point.

The Court: Is that all you want to prove?

Mr. Knoblock: That is all.

The Court: I think I will overrule the objection.

Q. On the morning of December 31, 1941, where was your husband?

A. My husband was home.

1261 Q. Up until what time?
A. Up until 11 o'clock.

Q. And do you know where he went, and with whom?
A. Yes, I took him down to the Jefferson Hotel and let him out in front of the hotel at ten minutes of 11.

Q. Had he been away from your home that morning on

any occasion?

A. He did picket duty the night before between 11 and 7, and he came home at 7:30 and stayed at home until I took him to the hotel.

Cross-Examination by Mr. Heyl.

Q. And did you hear your husband testify to this same thing in this court?

A. Yes, I did.

Mr. Heyl: I move to exclude this testimony on the ground I moved for the exclusion of the testimony of other witnesses. She has been in the court room all the time.

The Court: Yes, that's true. It puts me in rather an embarrassing position, but I am going to let it stand.

Mr. Heyl: That's all.

Mr. Knoblock: That's all, Mrs. Gabbert.

1262 LEO C. TOTTEN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Leo C. Totten.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the morning of January 2, 1942, I will ask you where you were at approximately 8 A. M.

A. I imagine about at the depot. I don't know for sure

at that time.

Q. Where did you go from to the depot?

A. I went from the Jefferson Hotel.

Q. And about what time did you arrive at the depot?

A. Well, near 8 o'clock. I think I was at the hotel until possibly 8, and then I went to the depot.

Q. Whom did you meet down- Is that the Union

Depot you'refer to?

A. Yes, sir.

Q. Whom did you meet there?

A. I went down. I talked to Dave Gibbons (he was on picket duty there), and then, when I got ready to leave the depot, just as I started to drive away, Lucas came out and got in my car.

Q. Where did you and he go?

A. Down South Washington Street.

Q. How far south on that road did you go?

A. Somewhere in the vicinity of Hollis.

Q. And what did you do there?

A. Turned around and started back.

1263 Q. How far back did you come?

A. Well, we came all the way back, but we stopped —It's about a half mile, I imagine, south of the Allied Mills.

Q. And when you stopped there, what happened? Just

tell what occurred there.

A. Well, we were trying to see who was on this train that went west and, when we saw the train coming, we just pulled over to the side of the road and tried to observe who it was.

Q. Did you get out of your cart

A. Yes.

Q. Did Lucas?

A. Yes, he got out on the right side.

Q. How far did he get away from your car?
A. Well, he just stood by the door of the car.

Q. Did he get as much as fifteen or twenty feet away?.

A. No, he couldn't.

Q. Ten feet?

A. No, we was too close to a guard rail there.

Q. Was Mr. Lucas within your full view and vision at all times—

A. Yes, sir.

Q. —while he was standing there?

A. Yes, sir.

Q. Did you on that occasion see Frank Lucas throw any benzine or inflammable fluid of any kind or character at this engine?

A. No, sir.

Q. Did he throw anything on that occasion?

A. No, sir.

Q. How long did you remain stopped there?

A. We weren't there only just momentarily, I 1264 don't think we were there longer than until the engine went on.

Q. Did you see Frank Lucas slap his knees and laugh?

A. No, sir.

Q. Were you observing him at all times?

A. Yes, I was watching out the right side of the car as the engine went by.

After Mr. Lucas got in the car, then where did you got

A. We came to Peoria.

What, if anything, occurred there?

A. Well, just before we got to Western Avenue, oh, for possibly a block somebody kept honking at us from behind, and so finally, as soon as traffic was so we could, I pulled over to the side, thinking it was somebody that knew me.

About how far were you from Western Avenue

when you stopped?

Oh, I imagine it was about halfway between Western Avenue and Easton Avenue.

When you stopped, what occurred?

Kipling pulled up alongside the car, and told me

stop.

Q. Is that the Harold E. Kipling who has testified in this court—

A. Yes, sir.

-on behalf of the plaintiff?

Yes, sir.

After you stopped, what did Kipling do! He jumped out of the car and pointed a gun at Frank Lucas, and told him to say his prayers, he was going to kill him.

How was he holding the gun?

Up, aiming it at him.

How far was he from Lucas when he did that?

It was at my side of the car, right up against the glass.

1265 Did he say anything else to Frank Lucas? Q.

A. That he would kill him. He repeated that several times, I don't know how many, and then he walked around to the right side of the car and repeated it several times, and then he came around and threatened me with the same thing.

What did he say to you?

He told me he was going to kill me, too.

Q. Did you hear him say anything else down there? I think possibly two or three times he hollered for somebody to call the police.

Was there a street car that arrived later?

There was a street car to the north of us, and I believe one to the back of us. I am not sure of that.

Q. Did you hear Mr. Kipling have a conversation with one of those cars?

A. The one going south.

Q. What, if anything, was said there?

A. Well, I didn't hear the conversation very well, but he said something to him about he would stay there until he got ready to go, or words to that effect.

Q. Did either one of you men get out of the car down

there until the police arrived?

A. No, sir.

Q. Why didn't you!

Mr. Heyl: Objected to as asking for a conclusion.

The Court: Yes, objection sustained.

Q. What was Mr. Kipling doing with his right hand

while he held that gun, if anything?

A. He kept slipping something on top of the gun, 1266 kept moving a lever up on top of the gun, or near the top, and kept sighting it directly at Lucas's head, and a couple of times at my head.

Q. About how long did you remain there, under those

conditions?

A. I would hate to say; I don't know. It seemed like a long while.

Q. Did you observe a squad car go by while you were

sitting there! .

- A. There was a police car came to Western Avenue and turned down Western, and went out Western toward Adams again. I think it was the county police. I am not sure. He had the gun in his right hand, and kept giving them the sign to come up here. They evidently didn't see him, or had business elsewhere
 - Q. They didn't come back?

A. No, they did not.

- Q. Later on did police officers from the City of Peoria
- A. There was two plain clothes men come down and got us.
 - Q. And they took you to the City Hall?

A. Yes, sir.

Q. Now, referring your attention to the date of December 31, 1941, when it is alleged that— Did you see Mr. Kipling out there near or about a half mile south of the Allied Mills where you had stopped?

A. No. I didn't.

Q. Now, with reference to December 31, 1941, in regard

to a switch engine near the intersection of Franklin and Washington Streets in East Peoria, were you in the court room when some witnesses for the plaintiff stated they saw you there?

A. Yes, sir.

Q. Do you know who that witness was?

A. I don't know whether it was Carroll Payne or that special agent, Thompson.

1267 Q. Did you arrive before, during or after that

incident?

- A. I arrived there during, I guess you would say. The engine was standing there, and there was quite a crowd around.
- Q. Was there anybody around the locomotive at that
- A. There was two people that I knew. Carroll Payne was walking up to the engine, and Thompson was standing by the engine.

Q. Had Carroll Payne arrived there before or after

you!

A. Well, we only stopped just momentarily. The state police told us to move on.

Q. Was Carroll Payne there when you first arrived! Did you see him!

A. Well, I just don't know. I remember seeing him.

Q. Did you see anybody around the engine cab there!

A. No, I didn't.

- Q. Did you see anything going on unusual when you arrived?
 - A. No, just a crowd around there was all.

Q. How long did you remain there?

- A. We just barely stopped. None of us got out of the
- Q. On that occasion did you throw any rocks or missiles or any object of any kind or character at that switch engine?

A. No. sir.

Q. Did you threaten anybody in any manner or form on that occasion?

A. No, sir.

Q. Did you get out of your automobile there?

A. No, sir.

Q. With reference to any statements made to you or to any other individuals in meetings, do you recall whether

any statements were made to you by either Mr. Coyle or Mr. Keiser with reference to violence during this strike?

A. Yes, sir.

1268 Q. What were those statements?

A. They made them to all of us: No violence.

Mr. Knoblock: I think you may cross-examine.

Cross-Examination by Mr. Heyl.

Q. When was it that Coyle and Keiser told you "no violence"?

A. They have told us that numerous times in meetings,

Q. When was the last time they told you before January 2, 1942?

A. Well, I just couldn't say, but it has been repeated several times.

Q. They told you that the night before, didn't they?

A. I am not sure.

Q. What were your men throwing stones at the trains for if they were told not to?

A. I don't know.

Q. Did you see anyone throwing stones at a train?

A. No, sir,

Q. You are now testifying under oath-

A. I am.

Q. —that you never saw anyone throw a stone at an engine or train of the T. P. & W. while this strike was on,—

A. That's right.

Q. —is that correct?

A. That's correct.

Q. Did you see any windows broken on the trains or engine cabs or the cabooses?

A. I saw some windows broken in that switch engine, yes, sir.

Q. Do you know how they got broken?

A. No, I don't.

Q. You didn't think the birds flew in there and 1269 knocked them out, did you?

A. Well, I didn't know.

Q. Why was it that you kept your motor running when Mr. Lucas got, out of the car when you saw this train approaching?

A. I was standing partly on the slab.

Q. You were in the car?

A. Yes, sir, I was.

Q. And you had your motor running?

A. Yes, sir.

Q. And he had the door open?

A. That's right.

Q. As soon as he stepped in the car, you started to Peoria?

A. When he got in, we went on.

Q. You started at a rapid rate of speed?

A. No.

Q. Did you see Mr. Kipling follows you?

A. No, sir, I did not.

Q. Did you say anything to him when he stopped you and arrested you—

A. No.

Q. -as to why he was doing it?

A. I started to say something to him, and Lucas told me to keep still.

Q. Lucas thought it would be better if you didn't make any statements?

A. I think possibly it was better that I did keep still.

Q. Now.-

Mr. Knoblock: Let him finish. Mr. Heyl: He finished.

1270 Mr. Knoblock: I want that finished.

The Court: He answered.

Question and answer read by reporter.)
Q. Because you might incriminate yourself if you said anything?

A. I don't think so.

Q. You hadn't done anything that morning, and were arrested in broad daylight on Adams Street, a public street?

A. That's right.

Q. And taken to the City Hall?

A. That's correct.

Q. And you never asked a single soul until you got to the City Hall why you were taken there?

A. I was afraid to.

Q. Ask who?

A. Kipling.

Q. You were taken to the City Hall?

Yes, sir.

The Court: Kipling didn't take you to the City Hall?
No? Let's go ahead.

(Question and answer read by reporter.)

You were taken to the City Hall by the two police officers?

A: That's right.

You didn't ask either one of them why you were being taken?

A. No. sir, I didn't figure they knew.

And they didn't tell you? Q.

A.

And you didn't know why you were arrested? Q.

Yes.

Q. And the reason was because you and Lucas 1271 concocted a scheme to throw something at the train to burn the train or injure someone on it?

A. No. sir.

And that is the only purpose you had to go?

A. No. sir.

Q. What was it?

The purpose was to see who was on the crew.

You were at the station?

A. Yes, sir.

Q. And you could see the train?

I did see it.

Q. And you could tell who was on the train?

No, sir, I couldn't.

And you thought it would be better to go on the road while the train was going fast to try and see?

A. No, I didn't. I wanted to see who was on that train. The only reason you had to go to Hollis was to see who was on the train?

1. Yes.

Q. And you saw the train at the Union Station?

Yes, sir.

And you went clear to Hollis to find out?

A. Yes, sir.

Q. And then you came back to Peoria?

A. I did.

Q. Did you find who was on the train?

Α. No.

- Q. And after the bottle was thrown you didn't see? A. No. I didn't.
- 1272 Didn't the bottle go through the window? I couldn't tell you. I didn't see the bottle.

Was anybody throwing rocks at the train?

I didn't see anybody.

Q. You didn't see a bottle? A. No, I didn't.

Q. Did you see the little boy coming down the road walking to the grocery store about that time?

A. No, I didn't,

Q. I want to know if you saw anybody at any time that morning along the right-of-way.

1. No, I don't remember seeing anybody.

Q. You and Mr. Lucas were the only ones trying to find out who was on that train?

Mr. Knoblock: I object. The Court: Sustained.

Mr. Knoblock: Argumentative.

The Court: Sustained.

Q. Were there any persons near you on that side of the right-of-way?

A. Not that I saw.

Q. That you saw?

A. Nobody:

Q. Anybody over on the other side of the track?

A. I didn't see anybody.

Q. Were you trying to see yourself who was on the train?

A. Yes, sir.

Q. You were making an effort to?

A. Yes.

Q. You couldn't see the automobile from where 1273 you were sitting in your automobile? The train, I mean.

A. Yes, I could.

Q. And the engine was eight feet below where you were?

A. You could still see the engine.

Q. You were on the left side of the car, weren't you!

A: Yes, sir.

Q. I will ask you to look at the photograph that has been marked "Plaintiff's Exhibit 7", and state if that is the guard rail that you were parked near at the time you say you were trying to find out who was on the train.

A. There is a guard rail like this where we were, and

it looks like it possibly,

Q. Look at the picture marked "Plaintiff's Exhibit 5" and see if that helps you any.

A. No. I don't believe it would (examining same).

Q. Is that the guard rail?

A. This one here looks something like the guard rail.

Q. You are pointing to Plaintiff's Exhibit 5?

A. Yes.

Q. That guard rail that appears on the right hand side of the picture, Plaintiff's Exhibit 5?

A. We were along by the guard rail, but I don't know

just where.

Q. That is where you saw the engine pass, is it?

A. That's right.

Q. It wasn't four or five blocks below the Elm Grove Tayern, was it, where you saw it pass?

A. No, I don't think so.

Q. Did you see Dilley there?
A. No, sir, I didn't.

1274 Q. You didn't see him at all?

A. No, sir.

Q. Did you hear anything on that train?

A. Nothing but the left blow-off cock was open when they went by us.

Q. That is on the opposite side?

A. That's right.

Q. That is all you heard?

A. That is right.

Q. Did you hear any shooting?

A. No.

Q. Didn't hear any rocks or bricks?

A. No, sir.

Q. Your hearing is good, is it?

A. Yes, sir.

Q. You didn't get out of the car at all, as I understand it.

A. No, sir.

Q. You were back of the wheel?

A. Yes, sir.

Q. Now, on the 31st day of December, 1941, which was the day before New Year's, you say you were over at the east end of the Peoria bridge on West Washington Street, is that correct?

A. Is that the date the switch engine was there?

Q. That is the day you testified to, and I am asking you.

A. I was over there the day the switch engine was there.

Q. Do you know who the engineer on that train at that time was?

A. No, sir, there was nobody on.

Q. Did you see the engineer?

A. There was no one on that I saw, anyway.

Q. Did you see anyone being chased?

1275 A. No, sir.

Q. Where were you stopped?

A. Right along by the pilot of the engine.

Q. On Washington Street?

A. On Route 24.

Q. Were you on the street or on the shoulder?

A. Partly on the street, and the state police came there and told me to move on.

Q. Who was with you?

A. There was H. O. Todd and Hustler Wilson.

Q. Anyone else?

A. That's all.

Q. Did you see any strikers there?

A. No, I didn't.

Q. Any other strikers?
A. I don't believe I did.

Q. None at all?

A. No.

Q. Where did you come from before you stopped there?

A. I came from the Union Depot; just got my check that day.

Q. You were getting your check the same day? Did you cash it that day?

A. No, sir.

Q. You didn't cash it that day?

A. No, sir.

Q. That is where you were before?

A. I was up and turned in my company property, and got my check.

Q. What time did you do that?

A. I couldn't tell you the exact hour, but it was 1276 sometime in the afternoon possibly around 2:30, 2:45 or 3 o'clock.

Q. Did you stop and wait for this engine?

A. No, the engine was there before we got there.

Q. All of you that got your checks cashed that afternoon got back to see that engine?

A. I didn't get it cashed; just got it from the depot.

Q. You had gotten it at the depot, and the others that were over there had gotten their checks?

A. H. O. Todd is the only one that I knew got his check.

Q. And you were all getting your checks so you would be here when this engine was stopped?

A. I didn't know that.

Q. Were there any pickets around there?

Q. Did it just stop because it ran out of steam?

A. I don't know.

Q. Why was it stopped?

A. I don't know.

Did you hear what was done to the engine?

Yes, sir.

Mr. Knoblock: I object.

The Court: He has answered.

Did you observe the windows were broken out of the engine cab?

A. They were on the right side.

Q. Did you see any rocks around there?

A. No, I didn't.

O. See anyone on the engine?

No, sir.

Q. Where were you going? A. Going over to East Peoria. I was going over to get my watch fixed. I intended to go out Washington Street, and I saw the engine and drove out 24.

Anyone else stopped around there?

- There was a lot of cars and a lot of people around there. ..
- The traffic officers complained of you and the other strikers in their cars, and told you to move on?

A. I was the only one that was moved.

Q. Did you see anyone throw a ball but through a car?

A. I didn't see that. Q. Your eyesight is good, is it?

· A. Yes, sir.

Q. Where-Were you there when Mr. McNear got there?

A. No, sir, I wasn't.

You didn't see that?

A. No, sir.

You didn't see any of the East Peoria police there, did you?

No, sir.

When you were arrested by Mr. Kipling, you say he came around on your side of his car?

He got out of his car on my side.

And walked around the front of the car?

- No, he stood there on my side, and pointed the gun at Lucas.
 - What?

A. He pointed the gun at Lucas, and finally walked around on my side.

Q. Have you known Mr. Kipling?

A. I have known him for years.

Q. And you are friendly with him?

1278 A. I always have been.

Q. And Lucas always-Lam not so sure of that.

A. Lam not so sure of that.

Q. And you were friendly with him?

A. Yes, sir.

Q. And you had a speaking acquaintance with him?

A. Yes.

Q. And you didn't say, "Kip, what are you stopping us for?"

A. I was afraid to.

Q. You were afraid you would get harmed?

A. No. sir.

Q. That is why you didn't ask anybody why you were being arrested?

. A. Yes, sir.

Q. And it was broad daylight, and you hadn't done anything?

A. That's right.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1279 WALTER F. KOHTZ, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name. A. Walter F. Köhtz.

Q. Are you one of the defendants in this case?

A. I am.

Q. Drawing your attention to the evening of December 30, 1941, around 5:30 to 6 P. M., I will ask you if you were at the head of the lane leading to the yards of the plaintiff's property on Route number 24.

A. I was.

Q. I will ask you if you can recall seeing the car driven by Herschel Thompson, one of the special agents of plaintiff, coming north on that road and proceeding on to the hard road that evening.

A. I did.

Q. What occurred there?

A. Well, he come out of there at a rather rapid rate of speed and disregarded the "Stop" sign at the state route, proceeded out onto the hard road, which was covered with snow and ice, and attempted to make a left-hand turn toward East Peoria, and this car going east—truck, rather—come down the road, and they had some kind of a collision there, striking the Thompson car on the left hand door, and then the car went to the side of the road, the north side of the road, and the truck was stopped some-

wheres near in the center of the hard road.

Q. What was done to the truck, if anything?
A. I didn't notice any damage on the truck.

Q. After the two cars came to a stop, did you see where Mr. Thompson went?

A. As I recall it, he went back down to where the truck

driver was.

Q. What occurred after that with reference to the

Thompson car?

A. Well, there was some fellows went over to the Thompson car, including myself, to see what the extent of the damage was that had been done. We seen it hit the door, and there was glass flew and, as I got over there, somebody jumped out of the car in a big leap. There was a commotion there of some kind, and this fellow that jumped out of the car took a swing at me, and I side-stepped him.

Q. Did you hit him at all at that time?

A. I did not.

Q. What direction did that man go in?

A. He went in a southerly direction toward the other side of the highway.

Q. What happened over there, if you saw what hap-

pened?

A. There was some kind of a scuffle with someone else. I didn't know who was involved. I walked over that way, and the last I seen was somebody down in the ditch.

Q. Was more than one person down in the ditch?

A. One is all I saw at that time.

Q. Did-You didn't see anyone else down there later, did vou?

A. No, I didn't.

Q. Do you know who helped this man out of the ditch!

A. W. E. Causey.

Q. How far was Mr. Causey away from you when 1281 this man jumped out of the car, if you know! Do you know where he was!

. Beg your pardon?

Q. Where was Mr. Causey, if you know, when this man jumped out of this car?

A. He was somewhere in the vicinity of the fire there,

right on the culvert.

Q. About how far was that from this automobile?

A. I would say about a hundred feet.

Q. Did you see this man come up out of the ditch?

A. I did.

Q. Did you see Causey there!

A: I did.

Q. What happened?

A. Well, it was slippery there on the bank of the ditch on account of snow and ice, and he got him by the arm, and there was a car there, and this fellow got in the car apparently.

Q. Did you observe Mr. Causey at that time, or any other time, strike him with his fist or with any missile of

any kind or character?

A. I did not.

Q. Did you strike this man or use force upon him in any other way on that occasion?

A. I didn't do more than sidestep out of the way when

he swung at me.

Q. Did you swing at him?

A. I did not.

Q. Now, directing your attention to January 2, 1942, I believe either Mr. Gulick or Mr. Funk, two witnesses for the plaintiff, testified that they saw you standing 1282 near the Star Model Brewery in Peoria at the time

Mr. Funk was hit in the chest by a piece of slag. I

will ask you if you were there.

A. I was not.

Q. Were you in the vicinity of that place on that occasion?

A. I was not.

Q. Are those the only two occasions you have heard yourself mentioned by witnesses of the plaintiff?

A. One other occasion.

Q. Where was that?

A. That was at the Jap Davis crossing on that same morning.

Q. Were you there?

A. I was.

Q. Were there any acts of violence or stone throwing of any kind or character on that occasion?

A. There was not.

Mr. Knoblock: You may cross examine.

Cross-Examination by Mr. Heyl.

Q. Were you down south or west of the Allied Mills on January 2, 1942?

A. I was not.

Q. You weren't there?

A. I wasn't there.

Q. You weren't at the switch at the Allied Mills-

A. I was not.

Q. -as testified to by five witnesses in this case?

Mr. Knoblock: I object to that. The Court: Objection sustained.

Mr. Heyl: I thought maybe I could refresh his
1283 recollection if I called his attention to the fact five
witnesses testified.

Mr. Knoblock: They did not. The Court: Objection sustained.

Q. You weren't there?

A. I was not.

Q. Did you ever see a stone thrown at any of these trains?

A. I did not.

Q. Or brick bats?

A. No. sir.

- Q. Did you ever see any window broken out of the cabs or cabooses?
- A. I saw windows that were broken, but I hadn't saw them broken out.
- Q. Do you have any idea how they were broken?

A. I don't know.

Mr. Knoblock: I object.

'The Court: He said he didn't know.

Q. There weren't any hail storms during that period? Mr. Knoblock: I object.

The Court: Objection sustained.

Q. You were at the intersection of this lane and 24 on the evening of December 30?

A. That's right.

Q. Where were you when Thompson came out?

A. If I remember right around, right around, that little salamander where that fire was.

Q. You were in the middle of the lane?

A. No, sir, that is to the left hand side of the lane.

Q. There were quite a number of men there at that

A. Not so many.

1284 Q. How many? A. I would say four or five.

2. What were their names?

A. I don't know other than Mr. Causey and this Mc-Mullen was there. I didn't know what his name was at that time, never knew the man.

Q. Was he working for the T. P. & W.?

A. Yes, sir.

Q. Was H. O. Todd there? A. I don't know Mr. Todd.

Q. He walked up to the car with you and Walter

A. No, sir.

Q. Did you run?

A. No, sir.

Q. How far did you go from the place where the collision occurred to find the car?

A. I would say that was around eighty feet.

Q. And you were interested in finding out how badly the car was injured, were you?

A. That was my first thought.

Q. Is that what you were interested in? Not your first thought, but what were you interested in?

A. Wanted to see what damage was done to the car.

Q. Did you open the door?

A. No sir.

Q. How did it get open?

A. I don't know.

Q. Walter McMullen opened it?
A. That is what was testified.

1285 Q. Didn't you see it? A. No. sir.

You stood right there?

A. I come up afterwards.

Q. You came up after the door was open?

A. Yes, the door was already open.

Q. You heard Mr. McMullen say he opened this door, and the man came out like a rabbit?

1. That's right.

Q. You didn't see him if you didn't get there until it happened.

A. I was in the center of the road.

Q. You were waiting for him?

A. What?

Q. You were one of the fellows waiting for him to get out of the car?

A. I wasn't waiting for anybody.

Q. Who was the first man that hit him?

A. I didn't see anybody.

Q. When he went across the road, did he go alone or did somebody help him?

A. He went alone.

Q. Did anybody follow him?

A. There was one or two fellows standing across the road.

Q. Were they interested in the damage to the automobile? Do you know?

A. I don't know.

Q. Will you tell me why these men were waiting for this man Merrill eighty feet from where the accident hap-

pened, and over a hundred feet from the picket line?

286 Mr. Knoblock: I object. How could be tell?

The Court: I think he can tell where it was, his opinion.

Q. Did all of these men leave the picket line when this accident occurred?

A. I couldn't answer that.

Q. Didn't they all leave and go up after Merrill?

A. I couldn't answer that. Q. Did you see the truck!

A. The truck that hit the Thompson car? I just saw it out in the middle of the hard road.

Q. You weren't interested in how much damage was

A. I didn't notice any outward damage done to it.

Q. You didn't go and look, either !

A. I did not.

Q. You went directly to the car that Merrill was in?

A. That's right.

Q. Did you know he was in that car?

I did not.

You knew Thompson was the driver of the car, and he was a special agent?

I didn't know Mr. Thompson. I heard he was a

special agent, but' I didn't know the man.

Q. Did you see Mr. Merrill down on the ground?

A. I did.

How did he happen to get down on the ground?

Well, there is a guard rail there along the highway. I would say it's about two foot high, and that run for about a block.

Is that all you want to say about it? Q.

And I was on the center of the highway. As Merrill come out of this car, he struck at me and I sidestepped to one side, missing the blow; then he proceeded on across and what took place and how he got down in that ditch, I couldn't tell you.

You just think he fell in there?

There was one or two men by this guard rail as l went to the Thompson car.

That guard rail wasn't on the pavement, was it?

Yes, sir.

It was down off the hard road?

Down to the side of it.

How many men standing at the guard rail as this man went down?

Mr. Knoblock: I object.

The Court: He may answer.

A. One or two men there.

How far from the Thompson car?

I would say about fifty feet.

About fifty feet on down the road? Q.

Yes.

Q. That would be fifty feet from the place where the Thompson car stood?

Whatever the width of the hard road, that is what

the distance was.

Do you know the names of those men?

No. sir.

Were they strikers?

I don't know.

You wouldn't have any idea?

No.

1288 Q. Did you see what happened to these men when they picked Merrill up?

A. The strikers-the pickets, you mean?

2. You almost said it. Yes, down at the guard rail.

There was a few standing right around the fire

A. There was a few standing right around the fire

Q. You don't know what happened to this man at the guard rail?

A. No, I don't.

Q. Did they come back to the picket line?

A. I couldn't say.

Q. You haven't any idea who they were?

A. No.

Q. Was Causey one of that group?

A. Causey was down at the fire where I was.

Q. He picked this man off of the ground?

A. He didn't pick him up. He helped him get up the side of the hill. It was slick there.

Q. This man was bleeding in the face, wasn't he?

A. I didn't notice.

Q. Didn't you look at him?

A. I didn't.

Q. Do you know what became of this man Merrill?

A. I don't know, other than what I heard. I heard he went down to the master mechanic's office.

Q. Who told you that?

A. I don't know.

Mr. Knoblock: I object to that. The Court: Objection sustained.

Q. What was your interest in this strike, Mr. Kohtz?

A. Well, my interest was that my sympathies were
1289 with the men, as I was a former employee, too.

Q. What have you been doing the last year?

A. Oh, a little bit of everything; trucking.

Q. What is that?

A. Trucking.

Q. Who is that for?

A. Myself.

Q. Do you run a truck?

A. Yes.

Q. When did you start to help in this strike?

A. The day after it was called. Q. Who got you to start?

A. I volunteered.

Whom did you volunteer to?

There was some fellows there at the viaduct. drove in.

Q. You just joined?

That's right.

And continued in the strike as one of the pickets or whatever there was to be done until this restraining order was issued?

A. I was driving the truck and hauling coal and wood

and so forth.

You were on the picket line?

Not necessarily, other than just a visitor. A.

Were you on the picket line any day?

Several days. A ...

You were there at the head of the lane as a picket Q. that night?

A Not as a picket.

When did you go there that night? Q.

I was there most of the day. Just visiting around?

1290 Just visiting around, yes.

About ten below zero that day, wasn't it?

A. . I don't know what the temperature was.

Pretty cold, wasn't it?

Pretty cold, yes.

You were also at the viaduct visiting with the pickets, were you not?

Yes, I was.

Did you see any trains go by there with windows broken!

A. No, I didn't.

You saw trains go by?

I never paid no attention to the trains. There was Nickel Plate trains, and all kinds of trains.

Q. I am talking about T. P. & W. trains.

A. No.

Were you looking for any T. P. & W. trains?

A.

Q. What were you doing on the picket line if you weren't watching for trains?

I was hauling coal and wood, as I said.

Were you hauling coal when the man, Merrill, got hammered up?

I went up to see if there was any coal to be hauled. A.

You were there, all day?

Mr. Knoblock: I object.

The Court: Sustained.

Q. Were you there all day for that purpose?

A. I don't remember.

Q. The biggest part of the day? You stayed until Merrill's trouble?

A. Until the East Peoria police come up.

Q. And they arrested you?

You gave bond?

A. Yes.

1291

Q. Who signed your bond?

A. I don't know who it was.

Q. There were two fellows there?

A. Yes.

Q. Was it Keiser and Coyle?

A. No.

Q. Did you attend any of the meetings?

A. Jefferson Building.

Q. Jefferson Building or Hotel?

A. Hotel.

Q. Coyle and Keiser were there each time?

A. I never noticed whether they were or not.

Q. Did you ever see them there?

Q. Did you ever see them there! A. Yes, I have seen them there.

Mr. Heyl: That's all.

Redirect Examination by Mr. Knoblock.

Q. Did you ever hear Coyle and Keiser make any statements with reference to whether or not violence should be used on the picket line in this strike!

Mr. Heyl: I object as improper. The Court: He may answer.

Mr. Heyl: They didn't say it out loud.

Mr. Knoblock: Will you stipulate that in this rec-

1292 The Court: Answer the question.

Mr. Knoblock: Will you read the question?

(Question read by reporter.)

A. I did.

Q. Or at any other time? Violence at any other time? What was the statement?

A. They said, "No violence to be used." They stressed that very heavily.

The Court: Anything else?

Mr. Knoblock: Yes.

Q. After the strike was called, were you offered employment by the plaintiff in this case?

A. Yes.

Mr. Heyl: I move to strike that as a conclusion unless he states the name of the person.

Who offered you the employment?

A. R. B. Green.

Q. Do you know what capacity he has over there?

Maşter mechanic.

Mr. Knoblock: That's all. The Court: Is that all?

Recross Examination by Mr. Heyl.

Did you ever hear them talk about any violence in these meetings? That violence had been done to these trains?

A. I never did.

You never heard that? Q.

A. Never did.

You never heard there was any train that was stoned?

A. No. 1293

Until you come into court, you never knew such a thing occurred?

· A. I did not.

What employment were you offered by Green? He asked me if I wanted my former job back.

What day was that?

That, I believe, was December 30.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

CARL ROSKAMP, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name. A. Carl Roskamp.

Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to the evening of December 30, 1941, I will ask you if you were present between 5:30 and 6 P. M., at the picket line—

A. I was not.

Q. Wait just a minute! —where the lane enters onto Route number 24 from the plaintiff's yards. Were you present there that evening?

A. No, sir.

Q. Were you around there at any time during the Merrill incident?

1294 A. No, sir.

Q. Have you been mentioned at any other places during—by the plaintiff's witnesses during this trial?

A. I have. Yes, I have.

Q. Where were they?

A. Down around the Franklin Street bridge.

Q. Were you present at any time when this switch engine at the intersection of Franklin and Washington was stoned on December 31 at approximately 3 or 3:30 P. M.?

A. No, sir.

Q. As a matter of fact, Mr. Roskamp, have you at any time anywhere or any place ever thrown any rocks, stones, bricks or missiles of any kind at any of the employees of the plaintiff or any of its private property?

A. I have not.

Q. Have you at any time or any place ever made any threat or malicious move toward any of the plaintiff's employees? Since the time this strike has been called, have you?

A. I have not.

Cross-Examination by Mr. Heyl.

Q. You never heard of any of the property of the T. P. & W. during this strike being damaged or injured in any way?

Mr. Knoblock: I object to that. That is not proper cross-examination.

The Court: I think he may answer.

A. I have not.

Mr. Knoblock: What he has heard-

1295 Q. And you never heard of it until you got into court and heard the testimony?

A. That's right.

Q. Do you know H. O. Todd?

A. Yes, sir.

Q. You heard his testimony this morning, didn't you?

A. I don't remember if I did or not. I don't remember if I was in the court.

Q. You remember him saying he saw you at the Merrill

incident that night at the head of the lane?

A. No.

Mr. Knoblock: I object because that is absolutely, deliberately contrary to the record.

I will let the reporter read the record.

O: You were at that corner that night?

The Court: Is the former question withdrawn?

Mr. Heyl: Hs has answered it. I thought he said "no". The Court: Did you say no, you didn't hear him testify! Mr. Heyl: That is correct.

Q. You say you were not there?

A. No, sir.

Q. Where were you that day?

A. At my place where I live in East Peoria.

Q. Were you arrested?

A. Beg pardon!

Q. Were you one of those arrested for this assault?
A. Yes, sir.

1296 Q. Where did they find you when they arrested you?

A. I went down to the City Hall.

Q. Where did they arrest you? Where did the officer come out for you?

A. No officer came out.

Q. How did you know a warrant was out for you?

A. Leo Totten told me Merrill had sworn out a warrant.

Q. Where do you live with reference to that place?

A. It's possibly three hundred feet down to the lane and to the west about two hundred and fifty feet.

Q. So you had about five hundred and fifty feet to walk after the assault on Merrill after you were there at the time, is that right?

A. I was not there.

Q. You were in your home all the time,-

A. Yes, sir.

Q. -is that right?

A. Yes.

Q. Did you tell Merrill, when you saw him at the City Hall, you weren't present when he was assaulted?

A. I didn't see Merrill.

Q. You haven't seen Merrill?

A. No.

Q. You haven't seen Merrill since?

A. No.

Q. Did you see Merrill at any time that night?

A. No. sir.

Q. Were you on the picket line at any time that day?

A. No. sir.

1297 Q. Or that night?

A. No. sir.

Q. Were you on the picket line any time?

A. I was on the morning of December 31 from 7 until 1. I believe.

Q. At what place?

A. At the head of the lane.

Mr. Knoblock: I object. We have only gone— The Court: He may answer. He answered.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

HUSTLER WILSON, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name,

A. Hustler Wilson.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to December 31, 1941, at 3:30 P. M., I will ask you if you heard this remark, or this in substance, made to Raymond Avery, "We are going to get rough. Stay off of engines and cabooses. You know what happened to that engine this afternoon"?

A. No, I didn't.

Q. Did you make any such remark to him, or hear 1298 anyone else make such a remark?

A. No. sir.

Mr. Heyl: I didn't hear the answer.

A. No.

Q. Directing your attention to December 31, 1941, at about 3:15 P. M., I believe one of the witnesses for the plaintiff, Carroll Payne, stated he saw you near the intersection of the crossing of Franklin and Washington Streets in the City of East Peoria. It was claimed that an engine was stoned. Were you there during any of the time that the stoning took place, or any of the acts herein complained of took place?

A. I was there afterward. I did see Payne. I went

over there with Jack Totten and Todd.

Q. You were in the same car with Totten and Todd!

A. Yes, sir.

Q. Was anybody in the cab of the engine when you arrived there?

A. I didn't see anyone.

Q. Did you at that time, or have you at any time, ever thrown any rocks, stones or missiles of any kind or character at any of the individuals or employees of the plaintiff, or any of their private property?

A. No, sir.

Q. Have you at any time ever threatened anybody with bodily harm or injury of any kind or character?

A. No, sir.

Q. At any time?

A. No, sir.

Mr. Knoblock: You may cross examine.

1299 Cross-Examination by Mr. Heyl.

Q. Did you ever see the result of any stoning of the engine?

A. Well, I did see it; looked like the glass was knocked out of that switch engine there at Franklin on Route 24.

Q. Did you inquire to find out about what had been done?

Mr. Knoblock: I object to that.

The Court: I think he may answer that.

A. I can go back to the beginning where I got in the car with Totten and Todd at the Union Depot. They were goin to East Peoria and I was going to the picket line, and we drove across the bridge and, when we drove by, there was a lot of people and this engine was standing there, and Thompson was standing there, and they stopped right around the pilot.

Q. Your car stopped!

The car stopped I was in, and it looked like the lights were knocked out of the cab, and Thompson was standing there and he started to walk over, and I saw Carroll Payne. He looked down from the rear of the engine or some place, and Thompson didn't come on, and the state police, they had us move on because it was blocking traffic there, a lot of cars and people around.

Q. Did you inquire to find out how that engine was

damaged?

A. No. sir.

Q. Did you ever find out later?

A. I didn't.

Mr. Knoblock: I object.

The Court: He said he didn't. Is that correct?

A., Yes.

You never heard how it was done?

No, sir.

1300 Q. And you have no idea?

No. sir.

You were on your way to the picket line when this happened?

I don't know where I was when this happened.

When you were over there and passed this engine, you were on the way to the picket line?

I was on the picket line, but I didn't see the engine

until after it happened.

Q. You all got there after it happened, I understand that.

A. Yes.

Q. Were you the only strikers there at the time this happened?

I only saw Thompson and Payne.

Q. They weren't strikers?

No, sir,

Did they have anything in their hands?

No, sir. Thompson started to come over, and he saw Payne and walked back.

Q. And you never saw Thompson or Payne have any guns in their hands?

No, sir.

Mr. Knoblock: I object.

The Court: Objection sustained.

Anybody on this engine?

No. sir.

You didn't see anybody?

No. sir.

Did you see anybody around there?

A lot of people. A.

Did you see the man that was knocked out off of that engine? That was hit with the end of a hose? A. No. sir.

You didn't see that?

No. sir.

Did you see the other man, the engineer, that was knocked out by some men!

No, sir.

Q. On December 31, 1941, about 3:20 P. M., you did have a conversation with Mr. Avery, did you not?

A. I did see Mr. Avery, yes, sir.

Q. Where was that?

Up at the end of the lane.

Q. End of the lane?

A. Yes, sir.

And Mr. White was there, and Mr. McMullen was Q. there!

A. I don't know who all was there.

Q. There was so many you can't remember?

A. There was quite a bunch there.

How many were there? A. Well, I wouldn't say.

Q. Did you have any talk with him about firing the engine?

Yes, sir, I asked him if he did. A.

You asked him about that?

I asked him if he fired, and he said he didn't, said

he was a pilot and he wasn't going to pilot any more.

Now, you also talked to him, and told him, did you not, if he ever got on an engine or caboose again it was going to be too bad for himself and family?

No, sir, I did not.

Did somebody say that? A. No, sir.

Q. Did anyone talk to him there? A. Someone talked to him before I did.

Someone said something before you came up?

Yes, sir, before I came up.

You don't know what was said at that time?

No. sir.

Where were you at that time?

I was standing up by the fire, and someone was

talking to him before I went down to where he was. He was just about four or five feet below me. I didn't know at the time who it was.

Q. Was John Feuger there?

A. I wouldn't say.

Q. What business was it to you if this man had been firing an engine?

Mr. Knoblock: I object to that. The Court: He may answer.

A. Well, it was quite a lot of business.

Q. What was it?

A. That was our jobs.

Q. You left it, didn't you? Mr. Knoblock: I object.

The Court: Objection sustained to that. Q. You were mad about it, weren't you?

Mr. Knoblock: I object to that. The Court: Objection sustained.

Q. Were you angry with him when you went out to talk with him?

A. I wasn't.

Q. And very friendly!
A. I was friendly.

1303 Q. And just laughed about it?

A. No, I wasn't laughing.

Q. You had just come from engine 70 about the time that this occurred? Just a little before this occurred, hadn't you?

A. Well, yes, sir, that was before.

Q. And you were the first one that came over to the picket line after you saw engine 70?

A. I couldn't say.

Q. Did you see anyone else there get there before you did?

A. Well, I don't know.

Q. Did you tell anybody that you saw the engine had

some damage done to it?

A. Well, I don't remember saying anything like that, but I think one of their men did come up—not Carroll Payne or Giffords' clerk, whatever his name is. He came up there right after that, and said something about it.

Q. You got there before he did?

A. Yes, sir.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1304 KNUT FELDT, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Knut Feldt. K-n-u-t F-e-l-d-t.

Q. Are you one of the defendants in this case?

A. No, sir.

Q. Directing your attention to December 29, 1941, on the occasion when William A. Grafelman came to your peket line by the freight house, did you observe Mr. Stetler speak to him at that time?

A. I seen Mr. Stetler go up to his car window, but I couldn't hear (I was too far away) what he said to him.

Q. Were you within hearing distance of what went on!

A. No.

Q. Did you make any statements of any kind or character to Mr. Grafelman at that time?

A. No, sir.

Q. Did you hear anyone else make any statements to him?

A. No, sir.

Q. Did you at that time throw anything, any rocks, stones or clubs or anything else of any kind or character, at Mr. Grafelman, or attempt to injure him in any way?

A. No, sir.

Q. Did you threaten him in any way?

A. No, sir.

Q. Is this the only occasion you have been mentioned in this case?

1305 A. Yes, sir.

Mr. Knoblock: You may cross-examine.

Cross-Examination by Mr. Heyl.

Q. You saw Grafelman turn his truck around and go out without going in the freight house after this man Stetler talked to him, did you not?

A. Yes, sir.

Mr. Heyl: That's all. Mr. Knoblock: That's all.

1306 ARTHUR BREWSTER, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you please state your name?

A. Arthur Brewster.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the morning of January 2, 1942, I will ask you who you were with on that morning.

A. John Gimming and—
Q. Did you meet anyone else that morning?

A. We did.

Q. Who was that? A man named Dilley?

A. Harold Dilley.

Q. Where did you meet Harold Dilley?

A. I think it was at the East Peoria—I will get straightened out here in a minute. Yes, we met him down there by the police station.

Q. And who was driving the car?

A. John Gimming.

'Q. And, Mr. Brewster, where were you sitting in that car?

A. In the front seat, right side.

Q. And where was Mr. Dilley seated?

A. In the back seat.

Q. Where did you go from the East Peoria police station?

A. We took a drive over to Peoria.

Q. And who, if anybody, did you see at the Cedar Street or the street that has sometimes been called the Persimmon Street crossing?

A. We weren't at the Cedar Street crossing.

Q. What's that?

A. We were not at the Cedar Street crossing.

Q. At that Persimmon Street crossing did you see Harold Kipling?

A. Not at Persimmon Street.

Q. Where did you first see him?

A. Edmund Street.

Q. And on that occasion I will ask you if John Gim-

ming said this, or this in substance, to Harold Kipling: "They may go out on the west end, but they are not coming back. We have got enough to get them, and you, too"! Did you say anything like that, or did he?

A. I did not hear anything said like that.

Q. Were you in a position to hear anything like that if it was said?

A. I was sitting right beside him.

Q. After you left the Edmund Street crossing, where did you go from there?

A. I believe to the P. T. tower.

Q. Did you see Mr. Kipling there?

A. Yes, I believe I did.

- Q. And where were you with reference to Kipling's car?
- A. I think we were standing right in the middle of the street, and he was off to the west side.

Q. And from the P. T. tower where did you go to?

A. I believe to the Allied Mills.

Q. And did you see anybody there at the Allied Mills right in front of you?

1308 A. Kipling's car.

Q. Were you following his car?

A. We were.

Q. Where did you go from the Allied Mills?

A. To a point just a short distance west of the tavern there, the Elm Grove Tavern.

Q. I think that is considered north and south there.

Which direction would you say it was?

- A. I guess that's still a continuation of Adams Street, north and south. It would be south.
 - Q. South of the Elm Grove Tavern?

A. Yes.

Q. And whose car stopped right in front of you, if anybody?

A. Kipling's.

Q. Did you observe anyone on the south side of the road there on that occasion? On the east side of the road? On the river side of the road?

A. Yes, I seen a car there.

Q. Who was it?

A. Jack Totten's car.

O. Who was with him?

A. Frank Lucas.

Q. Did you observe Totten's car there from the time you drove up until they pulled away?

A. Well, it pulled away shortly after we drove up.

Q. And did you see Jack Totten out of his car at any time?

A. I.did not.

Q. Did you observe where Frank Lucas was standing there?

A. Right close to the front door.

1309 Q. And which side of the Totten car?

A. On the right side.

Q. Was Frank Lucas in your full view at all times?

A. He was.

. Q. On that occasion did you see Frank Lucas throw any bottle of benzine or inflammable liquid of any kind or character?

A. I didn't see him throw anything.

Q. Did you observe him from the time you drove up there until they went away?

A. Yes, sir.

Q. Did you observe him at any time get away from the Totten car?

A. No, I didn't.

Q. Did you observe him at any time bend over and slap his knees and laugh?

A. No, sir, I surely did not.

- Q. After the Totten car left, what, if anything, happened?
- A. Well, shortly after they had left I heard shots and seen steam coming out on the right side.

Q. What happened then?

A. Dilley got out of the car and run across the road.

Q. What happened?

A. I seen him fall. Gimming and me went after him, picked him up and put him in the car.

Q. Then where did you take him?

A. Took him to, I guess you would call it, the Barton-ville police station.

Q. From there where?

A. To the Proctor Hospital.

- Q. Do you recall some witnesses for the plaintiff 1310 stating that they saw you and another party piling up rocks some place?
 - A. Yes, I remember that.

Q. Do you remember what the witness's name was?

A. I believe it was Mr. Kipling. I am not sure.

Q. Where were you piling up those rocks?

A. At the head of the lane.

Q. What were you going to do with them?

A. I was getting some small rocks about an inch and a half thick and possibly three inches across out of the diten

to put under that can that had the fire in it.

Q. Did you at any time ever throw any rocks, bricks, clubs or missiles of any kind or character at any of the property of the plaintiff or any of its employees?

A. I have not.

Q. Have you at any time ever threatened them by making oral threats, by conversation or anything of that kind?

A. No, sir.

Q. Were you mentioned at any other places in this testimony here?

A. I don't think so. I haven't heard it. Mr. Knoblock: You may cross examine.

Cross-Examination by Mr. Heyl.

Q. You were piling rocks at the Lake Eric crossing, too, weren't you?

A. Not that I know of.

Q. Isn't it the fact you gathered up a pile of rocks by the Lake Erie crossing?

A. No, sir.

Q. Do you tell the court that you and Gimming 1311 brought Dilley to the hospital?

A., Yes, sir.

Q. The fact of the matter is, someone else brought him to the hospital, and they met you afterwards?

A. They did not.

Q. Isn't that what you told the two officers there?

A. I didn't see any officers.

Q. Where did you park your car at the hospital?

A. On the south side of Second Street, I think you would call it.

Q. On Second Street.

A. Yes.

Q. And in front of which door?

A. Very nearly in front there.

Q. Did you throw anything out of the car after you came out of the hospital, and before you came up town?

A. I did not.

Q. Did you see that bunch of rocks that you dumped out of the car down at the hospital?

A. I have never seen that car before.

Q. Did you ever see that cloth taken out of John Gimming's car?

A. I never have.

Q. Didn't you see it that day?
A. I did not see it that day.

Mr. Hevl: I want these marked as exhibits.

The Court: Mark them now so there will be no trouble. (Cloth marked "Plaintiff's Exhibit 32", and box of rocks, etc., marked "Plaintiff's Exhibit 33.")

1312 Q. Now, Mr. Brewster, you got into Totten's car in East Peoria?

: I never was in Totten's car in my life.

Q. Weren't you in Totten's car the day before this incident down at Hollis?

A. No, sir, I was not.

Q. Whose car did you have? A. I was in Gimming's car.

Q. The day before?

A. I was in no car the day before that I remember.

Q. Where were you the day before?

A. I don't recall now where I was the day before.

Q. You got into Gimming's car at the East Peoria police station? Is that what you say?

A. No, sir, I did not.

Q. Where did you get in?

A. I was with Gimming all night. Q. Where did you stay all night?

A. On picket duty.

Q. Where?

A. On the east side of the dike in East Peoria on the hard road.

Q. Is that at the lane?

A. No, that's on the hard road 150.

Q. 150?

A. We were patrolling that.

2. That is still east of the lane on Route 24?

A. That's on Route 150 east of the viaduct on south.

Q: You were there all night?

A. From 1 A. M. to 7.

Q. And then you got in his car, and started in which direction?

A. Oh, we drove around there after we come off

duty.

1313 Q. Did you see train number 41 made up?
A. I did not.

Q. Did you see it pull out?

A. I did not.

Q. What were you driving down Washington Street for that morning?

A. Oh, we were just driving around. We heard there

was a train coming out.

Q. You knew, then, there was a train?

A. We had heard after we come off picket duty there was.

Q. When did you hear there was going to be a train?

A. I don't remember the exact time.

Q. You heard it before you left East Peoria, didn't you!

A. No, we come over to Peoria.

Q. Where did you hear it after you got over to Peoria!

A. I don't just remember where it was. Q. You stopped at the Union Station?

A. No, we weren't at the Union Station.

Q. You got Dilley there?

A. No.

Q. Where did you get Dilley?
A. East Peoria police station.

A. East Peoria police station.
Q. Did you hear his testimony this morning?

A. I heard part of it. .

Q. You got him at the police station?
A. Yes, close by the police station.

Q. After you got over to Peoria, why did you go down Washington Street?

A. I had heard a rumor Mr. Funk was convoying the trains through the yard.

1314 Q. Who?

A. Mr. Funk was piloting the trains through the "Q" yard, and I wanted to see whether he was or not.

Q. You could have seen that at the Union Station?

A. The train wasn't there. Q. Where was the train?

A. I hadn't seen it until it got to Edmund Street.

Q. Did you see it at Edmund?

A. I did.

Q. Did you see who was on the train?

A. I did.

Q. Did you see Funk?

A. Yes.

Q. Who else?

A. I saw Kipling, and I wanted to talk with Mr. Funk when he got off of the engine if it was so.

Q. Did you know he was going to get off the engine?

A. I presumed he would because I had heard that report, that he was just piloting the trains through the yard, and turned them over to the other engineer as soon as he got out.

Q. Did you say anything to Kipling down there?

A. I did not. .

Q. You were close enough to say something, weren't you?

A. No, I couldn't very well talk to him there because, the train was going over the crossing.

Q. You were within ten feet of his car, weren't you?

A. Well, I don't know just how close we were to his car. Q. His car drove right up by your car, and the man driving your car put the window down?

1315 A. I don't know.

- Q. And you saw Kipling within ten feet of that
 - A. I don't remember how far it was from him.

Q. You could have asked him then?

A. I don't talk to Kipling any more than I have to, never have.

Q. But you thought you would see where he got off his train, and then have a talk?

A. I wanted to talk to Funk, not Kipling.

Q. Did you tell Kipling you wanted to talk to Funk?

A. No, I didn't consider that any of his business.

Q. What did you want to talk to Funk about?

A. I wanted to ask him-I wanted to talk to him.

Q. About what?

A. Convoying those trains through there.

Q. He had been an employee of the railroad for many years?

A. Not so many.

Q. A longer number of years than you were?

A. Yes, I guess five or six years. I don't remember just exactly when he come there.

Q. Did you say anything to any of the officers of the company as to why he was convoying trains?

A. I have not.

Q. You weren't driving down Adams Street and on down to Hollis to find out who was on the train, were you?

A. I had found out, but I wanted to find out where

he got on?>

Q. You knew the train was a train that had its destination at Keokuk, didn't you?

A. No, I didn't know where they were going.

Q. You know that is where their trains run, don't you?

1316 A. They do sometimes, yes.

Q. So you stopped at the Hiram Walker crossing and saw Funk on the train?

A. Yes. sir.

Q. And anyone else that was there at the crossing near where you were could have seen Funk on the train?

A. I suppose, if they knew him. Q. He'was running the engine?

A. He was.

Q. At that time?

A. He was.

Q. You are sure of that, are you?

A. I am positive.

Q. You went down to the P. T. crossing or Iowa crossing, did you?

A. Yes, we did.

Q. Stop there again, did you?

A. Momentarily.

Q. And you were right up with Kipling, weren't you? Right near him?

A. Oh, probably twenty feet or so from him.

Q. Did you say anything to him?

A. Not to him.

Q. Did you see Funk there again?

A. Yes, I did.

Q. Then you went down to the M. & St. L. crossing, didn't you?

A. No.

Q. And then you drove on down to the crossing or, rather, the switch, at Allied Mills?

A. Yes, we were there.

Q. Stop there, did you?

1317 A. I believe for—

Q. You saw Funk there?

A. I did not.

- Q. Did you tell anybody in connection with the train that you desired to talk with Funk?
 - A. I don't know how you would tell them.

Q. What's that?

A. I don't know how you would tell them that far away.

Q. They were switching, weren't they?

- A. Setting out some cars, I believe.
 - Q. And you saw men on the ground?

A. Yes.

Q. And you saw Kipling there, didn't you?

A. I did.

Q. And his car was standing there?

A. It was.

Q. He got out and was directing the special agents with reference to what their duties were?

A. I did not see him get out of the car.

Q. You didn't?

A. No, I didn't.

Q. Did you see other men there from the train?

A. I seen some other men there. Q. How close were you to Kipling?

A. Oh, we were probably parked as far as from here to you from his car.

Q. About ten feet?

A. About ten feet, I expect.

- Q. Did you tell him you would like to speak to Funk?
- 1318 A. I never speak to Kipling.

Q. I am asking you if you did.

A. No.

Q. Have you ever talked to Kipling before?

A. Just on rare occasions.

Q. Were you frinedly? A. I can't say I was.

Q. Were you unfriendly?

A. I can't say I was unfriendly.

Q. You did when it was necessary in your line of work?

A. My work didn't take me much in connection with Kipling.

Q. Did you tell anyone else to tell Funk you wanted to talk to him?

A. I did not.

Q. The train, after they put out ten cars, started west?

A. I don't know how many cars they set out.

Q. You-waited until they got through switching, and then you went on?

A. I waited until Kipling pulled away with his car.

Q. The train had pulled out, too, hadn't it?

A. I think it had all gone by.

Q. And the train wasn't going very fast, was it?

A. No, they were starting out.

Q. Then you followed the train down to the point where you say you saw Mr. Totten and Mr. Lucas, is that right?

A. Yes.

Q. Were they there when you got there?

A. Yes, they were.

Q. Parked there?

1319 A. Yes, they were.

Q. Did you go on or stop?

A. Stop.

Q. Where did you stop?

A. Right behind Kipling's car. Q. Right behind Kipling's car?

A. Yes, sir.

Q. Kipling didn't stay there long, did he?

A. I don't know how long Kipling stayed there.

Q. You saw him take out after the other car, didn't you? A. I didn't see that.

Q. You didn't?

A. No.

Q. Did you drive on by Lucas and Totten before you stopped?

A. I don't recall as we did.

Q. Did you see Mr. Lucas standing out as you drove by!

A. As we come up there and stopped.

- Q. Did you stop on beyond west from him? A. Practically across the road, I believe.
- Q. Kipling was back of him, or to the west of him?

A. I don't think he was.

- Q. Where was he? You stopped behind him? You can certainly tell us where he was.
 - A. I think he was across the street on the slab from him.

Q. Are you thinking that?

- A. Not what I think. That is what I really believe.
- Q. You don't know what happened to Kipling?

A. I don't know what happened to Kipling, no.

Q. What did you do after you stopped there?

1320 A. I still sat in the car.

Q. All the time?

A. All the time.

Q. Never got out?

A. Yes, I did get out.

Q. What did you do when you got out?

A. Went over and picked up Harold Dilley, or helped

pick him up.

Q. Before you heard the shots and before you saw the steam and before you saw this man fall, Mr. Lucas and Mr. Totten had left the scene, hadn't they?

A. They left shortly after we got there.

Q. And before any of this happened?

A. After they had left a little while, when I heard shots and seen that steam.

Q. They had gone?

A. Yes.

Mr. Knoblock: He said that is true.

Q. Where was Kipling when you heard the steam?

A. Sitting in his car in front of us.

Q. He hadn't gone? A. I am positive.

Q. Did you see any rocks hit the cab of the engine?

A. I did not.

Q. Did you see any glass broken out of the headlight?

A. When I seen him fall, I didn't pay any attention but to get him in the car and get going.

Q. Did you see the headlight or any part of the engine broken?

A. No, I did not.

Q. Did you see any flame in that cab?

1321 A. I did not.

Q. You didn't see that?

A. No, sir.

Q. Did you see any person throw anything at that train?

A. I did not see anyone.

Q. At any time?

A. No, sir.

Q. Will you tell me the names of the men that were there besides the one that was with you and Lucas and Totten and Kipling and Dilley?

A. I don't remember who was there.

Q. About twenty-five or thirty men there?

A. I didn't see that many.

Q. How many were there?

A. I couldn't tell you.

Q. Do you know why they all happened to be at that point at that time the engine passed?

A. I do not.

Q. You have no idea?

A. I do not.

Q. You discussed that the night before at the union meeting?

A. We did not.

Q. At no time?

A. At no time.

Q. Did you see anyone with Mr. Dilley besides the ones that you have mentioned?

A. I don't understand what you mean.
Mr. Heyl: I will withdraw the question.

Q. Did Mr. Dilley ride there with you?

1322 A. He did.

Q. And he got out of the car and went over to the bank?

A. When the steam and shots started coming. Q. The shots were over before he left the car?

A. They were not.

Q. You heard him testify this morning?

A. I didn't hear all of his testimony.

Q. He had to run about fifty feet from your car to get over to the bank, didn't he?

A. I wouldn't say the slab is fifty feet wide.

Q. You were on the other side?

A. Just clear of the slab.

Q. I would like to have you look at this photograph which is marked "Plaintiff's Exhibit 6", and see if you can identify the place where you car was parked.

A. Not in that.

O. What's that?

Q. What's that? A. Not in that one.

Q. Can you fix the place by looking at Plaintiff's Exhibit 7?

A. No, I can't.

Q. Was it east or west of the end of the guard rail that's shown in Exhibit 7?

A. I don't remember seeing a guard rail.

Q. You remember stopping that morning on the way down at the Star Union Brewery crossing, do you not?

A. I did not stop there.

Q. Your car stopped there, didn't it?

Lhave never been to that place they talk of as the Star Union.

Do you know where it is?

A. I have passed there on the train several times,

You didn't stop there at all?

No. sir.

- How fast was this engine going after it left the Allied Mills switch, and before you saw Totten's car leave the road?
- Oh, I suppose they were living up to that speed restriction, which is ten miles an hour.

Then miles an hour? That is your judgment, is it?

A. That would be.

Q. The engine was much lower than the road, wasn't it?

Well, there's a cut through there.

Q. The edge of the pavement is about level with the window of the cab in the engine, isn't it?

A. I don't just recall just how the window comes along there with the slab.

Mr. Hevl: That's all.

The Court: Is that all with this witness?

·Mr. Knoblock: Yes, that's all.

The Court: We will be at recess for about ten minutes. (Recess.)

1324 SHELDON M. HARKLESS, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Will you please state your name?

Sheldon M. Harkless. A.

Q. Where do you live, Mr. Harkless?

At 3123-A.

Q. Where do you live now?

401 South Park Avenue. A.

Where did you live on January 2, 1942?

A. 3123 South Adams.

Q. How long had you lived there? A. About four years.

Q. Directing your attention to the morning of January 2, 1942, at about 9:30 A. M., I will ask you if your attention was drawn to anything out in the street.

A. Yes, sir.

- Q. What caused your attention to be directed in that direction?
 - A. A lot of swearing and abusive language.

Q. And did you see who was doing that?

A. Yes, sir.

Q. Describe the man with reference to what he had in his hand that was doing that.

A. Well, he had a shotgun.

- Q. And tell what you saw there. What was said and what did you hear?
- A. Well, he— There was two other fellows in a car. I couldn't—I didn't know the man, and he brandished
 1325 this shotgun, and I also heard him say he was going to blow one of them's head off if they moved the car.

Q. Did they move the car?

A. No, sir.

Q. How many times did you hear him say he would blow their heads off?

A. Once.

Q. Do you know anything about this case in any way, or are you interested in it?

A. No, sir.

Q. Were you subpoenaed to come here?

A. Yes, sir.

Q. Have you discussed this matter with me?

A. Yes, sir.

Q. And Judge Donaldson?

A. Yes, sir.

Mr. Knoblock: You may cross examine.

Cross-Examination by Mr. Heyl.

Q. When did you talk to them about it?

A. Well, about two weeks ago.

Q: Two weeks ago!

A. Something like that.

Q. Two weeks ago what day?

A. About the 8th, 7th or 8th of January.

Q. 7th or 8th of January?

- A. Somewhere along in there. I don't recall the date.
 - Q. How did you happen to talk with them then?
- 1326 A. They asked me to give them a statement.
 - Q. Who asked you?
- A. A fellow by the name of McGrath or McGraw that work over there.
 - Q. Works where?
 - A. T. P. & W.
 - Q. Where did he find you?
 - A. He found me at 3123 South Adams.
 - Q: Had you told anyone anything about it before that?
- A. Well, we had discussed the thing. We seen it in the paper. We wondered what was going on.
- Q. Did you tell anyone outside of your own family about it?
 - A. Yes.
 - Q. Who?
 - A. A lot of men talked about it.
 - Q. Talked about it generally, did you?
 - A. Well, no, not exactly generally.
 - Q. Did they pay you anything for that statement?
 - A. No, sir.
 - Q. Pay you anything for coming up here?
 - A. Subpoena fees.
 - Q. How much did they pay you?
 - A. \$2.00.
 - Q. Who paid you that?
 - A. The deputy marshal.
 - Q. What's your business?
 - A. Switchman.
 - Q. Where?
 - A. P. & P. U. Railroad.
 - Q. That is where you are working now?
- 1327 A. Well, I haven't worked there for over a year.
- Q. You belong to one of these Brotherhoods, do
 - A. Yes, sir.
 - Q. And you are interested in this controversy, then?
 - A. No, sir.
- Q. As soon as you saw the Brotherhood had something to do with this, you told them you could tell them something about it, did you?
- A. I could tell them something about it, and I did tell them something about it.
 - Q. And you did immediately?

A. Yes.

Q. So that is the reason you are interested in this case?

A. I am not interested in it at all.

Q: Have you attended one of the Brotherhood's meetings?

A: Once in a year.

Q: Have you attended any of the meetings of this Brotherhood—

A. No, sir.

Q. -since this strike occurred?

A. No, sir.

Q. What have you been doing the last year?

A. Living off of my insurance:

Q. Not doing anything?

A. No, sir.

Q. Were you asleep the day this happened?

A. No, sir.

Q. What were you doing at the time?

- A. Well, we were sitting up in my kitchen drinking coffee.
 - Q. You and your brother-in-law.?

A. Yes, sir.

1328 Q. He was there, too, drinking coffee? A. Yes, sir.

Q. How long had he been drinking coffee?

A. Oh, we had been there an hour or so.

Q. Johnson is his name, isn't it? A. Yes.

- Q. And he had been drinking coffee there about an hour?
 - A. Yes, sir. Well, we had-

Mr. Hevl: That's all.

A. -having our breakfast.

Mr. Knoblock: That's all.

1329 W. E. CAUSEY, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Will you state your name?

A. /William E. Causey.

Q. Are you one of the defendants in this case?

A. I am.

Q. Directing your attention to the date of December 30, 1941, between 5:30 and 6 P. M., I will ask you if you were near the hard road at the entrance of the lane leading to the T. P. & W. yards.

A. I was.

Q. Did you observe Hershel Thompson drive his automobile northerly on the lane onto the hard road that evening?

A. I did.

Q. And what occurred?

A. He got hit by a light truck.

Q. And after the accident, tell what happened.

A. Oh, he moved his car west probably seventy-five feet.

Q. What happened to the truck?

A. Well, it pulled over on the north side east a little ways.

Q. Were you around the Thompson car when Zeno Merrill got out of it?

A. No, sir.

Q. Do you know what transpired up on the hard road?

A. No, sir.

Q. When did you first see Merrill that evening?

A. When he was coming down the ditch.

Q. What did you see happen there?'

A. He ran into the—bumped his head on the culvert, and went down.

Q. Was anybody in the ditch after him at that time?

A. No.

Q. Did you ever see anybody in the ditch there that night after him?

· A. No.

Q. What did you do after he bumped his head into the culvert and fell down?

A. He got up, so I took hold of his hand and helped him out of there.

Q. After you helped him out of it, what did you do then?

A. I led him up to his own car and he got in.

Q. Did you at any time strike Mr. Merrill that evening?

A. No, sir.

Q. At any time that evening did you use force of any character or kind upon Mr. Merrill?

.A. No, sir.

Q. Did you that evening threaten Mr. Merrill in any way, manner or form?

A. No, sir.

Q. Now, directing your attention to December 30, 1941, at 7:55 A. M., did you talk to a truck driver by the name of A. H. Rinck?

A. No. I didn't.

Q. Did you hear A. H. Rinck testify here in this court room in behalf of the plaintiff he had talked to you that morning?

A. No, I didn't.

Q. Did you or did you not see or talk to A. H. Rinck the morning of December 30, 1941, at 7:55 A. M., or 1331 any other time that morning?

A. No, sir.

Q. Are these the only two places that you have been mentioned in the testimony of the plaintiff in the case, to your knowledge?

At the end of the lane is the only place I have ever

been mentioned.

Q. And how far were you—when the Thompson car came to a stop, how far were you from it, approximately!

A. Oh, I expect—you mean after it was hit?

Q. After it was hit and pulled off the highway.

A. Oh, I expect seventy-five feet.

Q. Were you ever any closer to the car until it was later moved than that distance there?

A. No, sir.

Q. Have you, at any time since this strike has been in effect, thrown any stones, clubs, missiles of any kind or character at any of the employees of the plaintiff or any of their private property?

A. No, sir.

Q. Have you at any time ever used any language threateningly, threatening injury or damage in any manner or form to any of the employees or the property of this plaintiff?

A. No, sir.

Q. Now,-

Mr. Knoblock: You may cross examine.

Just a moment!

Q. Have you on any occasions observed or heard Mr. Frank Coyle or Walter Keiser give any instruction with reference to the use of violence in this strike?

1332 A. Yes, sir.

Q. What have those statements been?

Mr. Heyl: I object; self-serving.

The Court: He may answer.

Q. What were they?

A. They told us no violence.

Q. Have they told you that just once, or how frequently?

A. About every time I have been to a meeting.

Mr. Knoblock: I think that is all.

Cross-Examination by Mr. Heyl.

Q. Did you ever hear at any meeting any discussion of what had happened?

A. No. sir.

Q. You didn't discuss that?

A. No, sir.

Q. Did you hear of any engine or caboose being struck by stones?

A. I haven't heard of it. I read of it.

Q. You heard from the men at the time, didn't you?

A. No, sir.

Q. You didn't know that was going on?

A. Not until I read it in the paper. Q. Were you on any picket line?

A. At the end of the lane.

Q. And is that the only one?

A. I was at the viaduct once.

Q. Did you ever see these nails, or nails like them, up there at the head of the lane (showing witness Plaintiff's Exhibit 19)?

A. No, sir.

1333 Q. Never saw any of those?

A. No; sir.

Q. Did you have anything to do with putting them under the cars up there?

A. No, sir.

Q. You helped break up and burn a nail keg, didn't you?

A. No, sir.

Q. You are sure of that, are you?

A. Yes, sir.

O. Did you ever stop a car that went into the lane?

A. No, sir.

Q. Or one that was coming out?

A. No. sir.

Did you ever say anything to anyone driving?

A. No. sir.

Have you ever seen that done? Q.

I have seen cars stop. I wouldn't say they were A. stopped by anyone.

There were a number of men there all the time?

A. Yes, sir.

When you picked up Mr. Merrill, how far was he from where you were when this accident occurred?

A. I was right where I had been all the time.

He was about fifty feet from the car when you picked him up, was he not?

Yes, fifty or seventy-five.

Q. And he was about seventy-five to a hundred feet west of the intersection of the hard road and the lane, wasn't he? That is where his car was?

A. It was between fifty and seventy-five.

He was about a hundred and fifty feet from the intersection of the lane?

No. sir. A.

You weren't, up there all the time, were you?

I were at the—on top of this culvert all the time. A.

You were?

A. Yes.

Q. What business had you on the culvert?

Ã. That is where I was doing picket duty.

Q. Is that where he was pushed down?

A. I didn't see him pushed down.

Q. He was on the ground?

A. I didn't see him until he was in the ditch.

Q. You heard some commotion up there?

A. Yes.

Q. You heard something that sounded like fighting?

Ã. I heard some hollering, yes.

Q. A. And it sounded to you like fighting?

No. sir.

Q. What did it sound like?

A. Like talking.

Which was it? Talking or hollering? Q.

A. Hollering.

QQ. How far were the voices from where you were?

I couldn't say. A.

Q. There were several?

A. I heard a couple of voices. Q. How many of you men were up there when 1335 you heard this hollering and commotion?

A. I don't know.

Q. Will you give us your judgment?

A. I don't know.

Q. Will you give me the names of anyone up there?

A. I can't. I don't know.

Q. And they were strikers up there? Everyone was a striker except this man?

A. I don't know.

- Q. You said a moment ago they were strikers.
 A. I don't know. I presumed they were up there.
- Q. Did you go up there where they were at any time?

A. No. sir.

Q. Did you see Mr. Kirk and Mr. McMullen leave the picket line and go up to this car?

A. No, sir.

Q. You didn't see that?

A. No, sir.

Mr. Heyl: That's all.

Redirect Examination by Mr. Knoblock.

Q. Who was on picket duty with you that evening, Mr.

Causey!

A. There was Mr. McMullen and C. L. Brown and myself, and Walter Kohtz was there, but he wasn't on picket duty.

Mr. Knoblock: That's all.

Recross Examination by Mr. Heyl.

Q. Were you arrested?

1336 A. Yes, sir.

Q. You were taken in by the police, weren't you?

A. Yes, sir.

Q. And gave bond?

A. Yes, sir.

Q. For assault upon Mr. Merrill?

A. Yes, sir.

Q. Who signed your bond?

A. I don't know.

Q. You don't know?

A. I didn't ask nobody to.

Q. You didn't ask anybody?

A. No.

Q. Pretty liberal over there, aren't they?

Mr. Knoblock: I object.

The Court: Objection sustained.

Mr. Knoblock: That's all.

The Court: I would like to ask you a question:

What was your work?

A. Engineer.

Q. The Court: You had been at that about how long!

A. About twenty years.

Q. The Court: When you read about these different injuries to the property over there and the trains and things like that, you read that in the newspapers, I take it?

A. Yes.

Q. The Court: Did the newspaper have any suggestion of what might have caused it? Did they say anything 1337 in the paper about whether it was caused by the former employees?

A. I couldn't say-it did.

Q. The Court: When you went to these meetings on the next evening and evenings after that, didn't you ever ask the fellows if they had anything to do with that?

A. No, I never asked the fellows anything. Q. The Court: You never made any inquiry?

A. No, sir.

The Court: That's all.

Recross Examination Resumed by Mr. Heyl.

- Q. Isn't it a fact every article published in the Peoria papers with reference to violence said former employees and strikers were throwing stones at the trains? Isn't that a fact?
 - A. It probably is.

Q. You read that?

A. I read the paper.

Q. There wasn't a single item in the paper that did not record the fact that these trains were being stoned by former employees, isn't that right?

A. The paper would say so.

Q. You made no inquiry of any of the men or anybody about it?

A. I didn't ask anybody anything. I didn't want them to tell nie.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1338 CLARENCE L. BROWN, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Clarence L. Brown.

Q. Are you one of the defendants in this case?

A. Yes, sir.

Q. Directing your attention to the evening of December 30 at 6 P. M., between 5:30 and 6 P. M., I will ask you if you were standing at the head of the lane next to the hard road, Route 24, that leads to the yards of the plaintiff.

A. Yes, sir.

Q. Were you present there when Herschel Thompson drove his car northerly out of the lane onto the hard read?

A. Yes, sir. Q. Will you tell us what happened? Tell us what you did and what occurred from then on in.

A. Mr. Thompson drove out on the hard road and collided with a light delivery truck, so Mr. Thompson pulled off about 45°, I would say, from the top of the lane, and the men in the truck pulled practically straight across the lane, and Mr. Thompson, he came down to talk to the men that he had collided with, and he talked to him there for a minute or so, and I noticed across the road at Mr. Thompson's car there was kind of a commotion, so I walked up the hard road on the opposite side of the road where Thompson's car was, and, as I got practically straight across from where his car was, Mr. Merrill rushed across the road.

1339 Q. What happened?

A. He came in the direction I was, with his fists out, and he made a motion at me, and I struck him. He kind of backed against this guard rail and lost his balance, and went back in the ditch backwards, and he got up and went straight down the ditch toward the culvert, and I

walked down that way, and Mr. Causey at that time helped or gave Mr. Merrill a hand, and helped him back in the car he came from.

Q. On this occasion, who struck first? You or Zeno

Merrill?.

A. Well, I wouldn't say that Merrill struck, but he came at me with his intentions—with his fists.

Mr. Heyl: I object to his intention, and ask to have it

stricken.

The Court: He stated the position his fists were in.

It may stand.

Q. Had you been over near the Thompson car when Merrill first got out of it?

A. No, sir.

- Q. You were on which side of the road at that time?
- A. I was on the opposite side of the road that Merrill came from.

Q. Did you go over after Merrill?

A. No, sir.

Q. Which side of the road did he come to?

A. He came from the opposite side of the road where Mr.—well, he came from the same side of the road Mr. Thompson had left his car parked, that is, he went to the opposite side of the road.

Q. Who else was there at that time?

A. Mr. Causey was there at the head of the lane 1340 and in the car, Mr. McMullen was there.

Q. Do you remember seeing Walter Kohtz there!

A. Mr. Kohtz was there.

Q. Do you remember seeing Mr. Todd there?

A. There was some other person, but I wouldn't swear

to that, but those two people was about there.

Q. Other than this one occasion at the head of the lane,—Then, directing your attention to December 30, or the same day, around 6 or a little after, do you recall the occasion when Mr. C. L. Brown—I mean Mr. Carl W. Sund drove out of the lane to the hard road?

A. Well, I don't know as that was the same day, but Mr. Sund did come out on the hard road, and I was talking

with him.

Q. Did you at that time in any way threaten Mr. Sund in any way, manner or form?

A. I did not.

Q. The fact of the matter is, you came to his assistance,

didn't you?

A. Yes, I came across there when some of the boys got to talking kind of loud, and I explained I had worked for Mr. Sund, and that he was all right.

Q. Outside of those two occasions, have you been mentioned by any of the witnesses that have testified on behalf

of the plaintiff!

A. Not that I know of.

Q. Have you at any time ever thrown any rocks, bricks, missiles, of any kind or character?

A. No. sir.

Q. At any time at any of the employees of the plaintiff, or any of their private property?

A. No, sir.

1341 Q. Other than this one occasion with Merrill, have you at any time threatened or struck at any of the employees of this plaintiff?

A. No, sir.

Mr. Knoblock: I think that's all.

Cross-Examination by Mr. Heyl.

Q. How far did you walk down to the Thompson car after you heard the commotion?

A. Well, I walked probably—That lane there is prob-

ably, oh, I would say twenty feet.

Q. You walked how far?

A. Probably twenty feet from the end of the lane.

Q. How long had the commotion been going on before you started to walk down there?

A. It hadn't much more than started.

Q. Then when you got down there, you saw Mr. Merrill coming?

A. Yes, coming across.

Q. Away from the fellows up near the car, is that it?

A.. He came across the road.

Q. Away from the men up there on the pavement, is that right?

A. Yes.

Q. And where the commotion was, when you first started down there, is that right?

A. Yes, sir.

Q. And the commotion indicated to you there was some kind of a fight going on?

A. Not necessarily.

Q. What was the commotion?

A. Well, it was just more or less—more a move-1342 ment of the feet, or something. I heard someone talking.

Q. Could you see anything?

A. No, I couldn't see—I did see the two men and this man coming across the street.

Q. Was there another man coming with him?

A. No, sir.

Q. Coming alone?

A. Coming by himself.

- Q. So, when he got to the culvert, you took a soak at him?
 - A. He never got to the culvert.

Q. You hit him before he got there?

A. He was probably twenty feet above the culvert.

Q. You hit him before he got to the culvert?

A. Yes, sir.

Mr. Heyl: That's all.

Redirect Examination by Mr. Knoblock.

Q. Describe the position that he had his fists in as he approached you.

A. He came out with the intention of a man preparing

himself to fight.

Mr. Heyl: I move to strike.

The Court: It may be stricken.

Q. Describe the position of his fists.

A. He had his fists doubled up, as I explained a while ago.

Mr. Knoblock: That's all.

1343 Recross Examination by Mr. Heyl.

Q. It's dark there?

A. Not so dark.

Q. Was it dark or light?

A. Light enough I could see his fists doubled up. I couldn't tell a man from that distance.

- Q. How far were the men at the car to where you hit Mr. Merrill?
 - A. The distance of the hard road.

Q. Twenty feet?

- A. Twenty or thirty feet. The car was off the road eight or ten feet.
 - Q. You didn't have any business up there?

A. Where?

Q. Where the commotion was?

A. The same as anybody else had.

Q. Did you have any business up there?

Mr. Knoblock: I object; asked and answered.

The Court: It may stand.

You mean was he patrolling that?

Mr. Heyl: I will ask another question.

Q. What did you go up there for?

A. To see what the commotion was.

Q. To get into it?

A. Not necessarily. I really didn't know what was

Q. You knew who was up there?

A. No.

Q. You knew Thompson was up there?

A. Thompson wasn't up there.

Q. You knew they went up and looked through the window?

1344 A. I don't know one looked through the window.
Q. One had a lantern?

A. Not that I know.

Q. You didn't see that at all?

A. No, sir.

The Court: Just one question:

Did you know who Merrill was when you hit him?

A. Yes, I knew who he was at the time.

DELMAR G. NEWDIGATE, called on behalf of the defendants, and having been first duly sworn, testified as follows, in answer to.

Direct Examination by Mr. Knoblock.

Q. State your name.

A. Delmar Newdigate.
 Q. Are you one of the defendants in this case?

A. I am.

Q. Do you know the two defendants, Walter C. Keiser and Frank Coyle?

A. I do.

Q. Have you heard them on any occasions make any statements with reference to violence or no violence in the conduct of this strike?

A. I have.

Q. What have those statements been with referenceby both Mr. Keiser and Mr. Coyle?

Mr. Heyl: I object as self-serving. The Court: He may answer.

1345 A. We were instructed at a meeting— Mr. Heyl: I object. Say what they said.

The Court: Yes, what did they say?

Q. Just say what they said.

A. Mr. Coyle said there was to be no violence at any time from the time the strike began until it ended, there was to be no violence whatever, that was one of the laws of the lodge.

Mr. Heyl: I move to strike.

A. He said that was the law.

The Court: It may stand.

Q. Did you hear Mr. Keiser make any statement in that regard at those meetings?

A. I believe Mr. Keiser covered the same subject in

about the same words.

Q. Have you heard them make that statement once, or more than once?

A. They made that statement at two meetings in the

Jefferson Hotel, and also a meeting in my basement.

Q. Now, directing your attention to the date of January 2, 1942, at approximately 3 P. M. at the Main Street intersection in East Peoria, Illinois, involving a train of the Burlington Railroad Company, I will ask you if you were there on that occasion.

A. I was.

Q. Will you tell us what happened?

A. I had been driving from picket line to picket line, and at the time it so happened I was on my way at the lumber yard at East Peoria to secure lumber and material for the shanty that has been spoken of at the lower end of the yard, and I noticed that a group of men were gathered at the Main Street crossing and the "Q" engine coming toward them some distance away.

1346 Q. What happened?

A. I stopped my car and got out, stopped my car just off the hard road on Main Street, got out and walked over with my camera ahead of the men, and took a picture of the group of men standing there, and they were holding strike signs.

Q. Did any of the men at that time have any sticks or

clubs or stones?

A. There was three strike signs, if I recall, and that is all anyone had in their hands.

Q. What did the Burlington train do?

A. The Burlington train came to within, I would say, fifty feet of the crossing and stopped.

Q. Did any of the striking employees there get up on

the railroad right-of-way?

A. They did not. They was in practically a perfect line on the crossing, remained on the street crossing.

Q. Did you upon that occasion have a conference with Mr. Marts?

A. I did.

Q. Tell us what was said there.

A. Mr. Marts called me to one side along with the chief of police of East Peoria, and asked me—He said, "Now, I have been instructed by my superiors to attempt a delivery to the T. P. & W." He said, "I want something definite to take back to them", and he asked me—He said, "Are you going to permit me to pass?" As I recall it, I said, "Mr. Marts, I can only speak, of course, for myself and my men." About that time I looked around and it was about 3:30, if I recall, and there had been quite a number gathered up from East Peoria, and there must have been

thirty or forty cars, I imagine, men going to the 1347 "Caterpillar" and coming from the "Caterpillar",

that had stopped also. By that time there was at least seventy-five or a hundred gathered there. At the time the train was actually stopped there was only about ten or twelve men that were pickets that were there.

Q. What did you say to Mr. Marts?

A. As I looked at this large group, some of them started talking loud and insisting they didn't pass, and I said, "Mr. Marts, after what has occurred this morning, I don't believe it would be a safe thing for me or you, either, to ask this group of men to take your engine by." I said, "We are doing everything that we can to keep peace and

all, and I can only speak, of course, for me myself and my men, but there are a lot here I don't know."

Q. How many were there you didn't know?

A. Outside of about ten or twelve men, I didn't know any of the rest of them.

Were any of the rest, outside of ten or twelve, striking

employees of the T. P. & W.1

A. I only knew the men that were employees of the railroad. A lot were strangers, and they had "Caterpillar"

badges on, and they were doing a lot of talking.

Q. Referring your attention to January 1, 1942, at approximately 11 P. M., do you recall an occasion when Carroll Payne and Boris J. Glavash—you encountered them?

A. I remember the occasion. I don't remember the time

or date.

The case that was mentioned—

Mr. Heyl: I want to object to this witness reading from something.

Mr. Knoblock: You mean reading from his notes?

The Court: Objection overruled.

1348 Mr. Heyl: I want to know what it is on for the privilege of cross examining.

A. I have been taking notes during the proceeding.

I remember the occasion of that, and I was present, but Mr. Gabbert stepped over to the car, I believe, and said something to Carroll Payne, and I believe I said, "Hi, Carroll." I didn't know the other gentleman.

Q. At that time did you hear Mr. Gabbert or anyone else present make any threats of any kind or character to

either Carroll Payne or Boris Glavash?

A. I didn't hear any threats, no. I heard Gabbert ask Payne if he had been riding on the footboard of an engine.

Q. Did he say it would be too bad for him and his family if he continued that?

A. No, he did not.

Q. On the occasion when Mr. Kipling testified that you were at the Allied Mills on January 2, 1942, did you at any time ever get south of the Allied Mills on that date?

A. I was just south of the crossing just previous to the time that I turned around and headed back to Peoria at

the time mentioned by Kipling.

Q. And after you passed Kipling there on that occasion, did you ever again on that day go south of that point?

A. Not on that day.

Q. Mr. Newdigate, have you at any time ever thrown

any stones, rocks or missiles of any kind or character at any of the property of this plaintiff, or any of their emplovees?

A. I have not.

O. Have you at any time ever made any kind of a 1349 threat toward this plaintiff or any of its employees? A. I have not.

Who set the date for the strike, Mr. Newdigate?

A. Well, as I recall, it was set by the men themselves at the meeting, voted.

And who voted for the strike?

A. We all voted for it.

Q. And how many of the group went out on strike?

A. All but the two that stayed in the employ of the company. That was a hostler and hostler helper.

Q.: How many were out on strike?

A. I believe there was a hundred and six of us, and two staved in: one hundred and four.

Mr. Knoblock: I think you may cross-examine.

Cross-Examination by Mr. Heyl.

What do you do? What did you do before the strike? Q. What do you do? What did you A. You mean in the employ of the railroad?

Q. Yes, sir.

Switchman.

And you are an officer of one of the Brotherhoods. are you?

I am just a chairman in the Toledo, Peoria and Western.

Q. Chairman of what?

Brotherhood of Railroad Trainmen.

And you say one of these meetings was held in your basement?

A. Quite a number of meetings were held in my basement.

What was the purpose of holding them in the basement?

That we should have a place to meet every day, and A. the same place.

Q. They had a room at the Jefferson Hotel?

A. Later. At that time our grand lodge officers were sent to Washington on a wild goose chase.

Q. That was in early days?

Yes

Q. You don't blame us for that? After the strike started, meetings were held at the Jefferson Hotel, were they not?

A. They were.

- Q. Were they all held there after you started to hold them there?
- A. There was two meetings held at the Jefferson Hotel previous to the meeting for the strike. After the strike was in force, all of the meetings have been held at the Jefferson Hotel.

Q. None in your basement?

A. No. sir.

Q. Mr. Keiser and Mr. Coyle, two defendants in this case who have been at the trial table of defendants' counsel since the beginning of the case, were present at all the meetings you attended, weren't they?

A. No, not all the meetings I have attended. As I have

said, they were in Washington.

Q. I am not talking about Washington. Let's keep on the strike.

A. I am talking about the strike.

Q. On December 28, 1941?

A. When all the men were present? When all the men were present, Mr. Coyle and Keiser were not present at all the meetings.

Q. Were they present at most of the meetings?

A. At a great number of meetings.

Q. How many meetings did you have every day?

A. We have had a meeting every day.

1351 Q. They were present at every meeting since the strike started?

A. I wouldn't say they have been at every one.

Q. They have been directing the strike for their two Brotherhoods?

A. I wouldn't say "directing" it. That has been my

job more or less.

Q. Then you have been directing the strike for both-Brotherhoods?

A. No, sir, Mr. Totten is the chairman.

- Q. Mr. Totten is the chairman of one Brotherhood?
- A. Brotherhood of Locomotive Firemen and Enginemen.
 - Q. So you and Mr. Totten are chairmen?

A. Local chairmen.

Q. Local chairmen who have been directing this strike!

A. More or less.

Q. You have been on the job every day?

A. Yes, sir, day and night.

Q. And you have gone back from one picket line to another?

A, I have.

Q. Did you ever see a striker throw a rock at a train?

A. I have not.

Q. Did you ever see any railroad property struck by a rock, or any windows broken?

A. I have not.

Q. Did you ever hear of it?

A. I have.

Q. Did you do anything about it?

A. I have.

Q. What did you do about it?

- A. I have insisted more than once that there should be no violence.
- Q. You read the newspaper on January 1 that cer-1352 tain men had assaulted Mr. Merrill, and had thrown rocks at the trains and stoned the trains, didn't you?

A. I have read quite a bit of the news in the newspapers in regard to it.

Q. Did you ever take that up at the meeting?

A. Yes; not so much at the meeting, but individuals I have heard mentioned.

Q. Were you down there following that train that was going west on the morning of January 2?

A. I went as far as Allied Mills.

Q. You saw it several times in the meantime? :

A. I did.

Q. Did you see strikers following the train?

A. I was along with Kipling's car, followed with Kipling's car.

Q. How many of you followed Kipling's car?

A. John Gimming's car was behind his car, and I believe I was ahead of Kipling's car.

Q. What was the purpose of following Kipling's ear?
A. He was following the train, and that was our intention.

Q. What were you following the train for?

A. I heard there was quite an argument on the inside between Mr. Funk and Mr. Gifford, and that Mr. Funk had told Mr. Gifford that he was getting tired of doing all the piloting and taking all the rap out there, and that Mr. Gifford wasn't any higher official than he was, and that it was his turn to take one out.

That was the reason you followed the train?

I did. A.

Gifford wasn't on the train, was he?

He was not.

1353 Was Funk on the train?

He was.

Why were you following the train, then?

Until I saw Mr. Funk.

You saw him before it got down there?

No: I didn't drive down to Edmund Street or any other crossing that was mentioned.

Where did you pick up Kipling and Gimming?

A. I saw Kipling on Washington Street before we got to Edmund Street, but I didn't turn down Edmund Street. Q. You waited for them?

A. I stopped at the "Stop" light, and they were ahead of me.

Did you stop for any reason except the "Stop" Q. light?

A. I waited a while until they come up because the train hadn't crossed the crossing.

Q. How far were you from the crossing?

I stayed on Washington. A.

You talked with your other men when you were

traveling down below?

No, sir. Farther down beyond the viaduct leading to Bartonville, the train stopped at what we call the "M. & St. L. set out" and, as they were setting out the cars. we were stopped alongside the pavement. Kipling's car and Gimming's car and my-or the Gimming-pulled up alongside of my car.

They told you Funk was on the train?

I had seen him.

Why did you go below if you knew he was on the Q. train?

For the same reason that has been mentioned before: To see when Funk got off the train.

Is that the only reason?

Yes.

Is that the best excuse you have for following the train?

If you can think of a better one,-

Mr. Knoblock: I object.

The Court: Sustained.

Q. Did you follow that train to see if Mr. Funk had got out?

A. I knew he was on it. Mr., Knoblock: I object. The Court: He answered.

Q. You said you knew he was on, and you followed it? The Court: He may answer.

A. I continued down to the Allied Mills to see if Funk got off.

You first followed to find if Funk was on?

That's right.

You said you found out he was on at Edmund Street and, notwithstanding that, you followed it down to Allied Mills, is that correct?

.A. That's correct.

What was the purpose of following if you knew he was on?

Answer my question!

I am answering it. By the time I got that far, I wanted to see if he would get off.

You thought he would get off in that mob?

A. There wasn't any mob near him.

Wasn't there a mob below Allied Mills?

No, there wasn't a mob below Allied Mills.

You saw from fifteen to twenty-five men down there?

A. No. sir.

And isn't that the reason you turned around and came back to Peoria? Because you didn't want to get mixed up?

No. sir. A.

You knew there was going to be violence?

No, sir, I only saw four.

What became of Gimming's car?

A. His car was sitting there when I left.

Q. Where?

A. Allied Mills.

- Where was Gimming's car? Q.
- Ahead of Kipling's car. A. Q.

Where was Totten's car?

I don't know.

Q. You knew he had gone on to get planted so he could hit that engine when it went by?

A. I hadn't seen him all day. I did not.

Q. You knew it wouldn't be good for the Brotherhood if the chairman was around and there was violence, and you came back to Peoria?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. What were you going to do to Funk when he got off!

A. I wasn't going to do a thing.

Q. The reason, you said, you followed was to see when he got off?

A. I wasn't going to do a thing.

Q. What business was it of yours if he got off the train?

A. I wanted to know-

Q. Please answer the question. It was a childish answer.

Q. Did you intend to beat him when he got off the train?

A. He is a bigger man than I am.

1356 Q. Did you?

Q. Did some of the thugs you had-

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did you have any rocks in your car?.

A. I certainly didn't.

Q. I want you to state to this court whether or not you ever saw any man picketing throw a rock at any train, engine or caboose on any other train.

A. I have not.

Q. Did you ever hear of any of them doing it?

A. I have heard of them doing it, but not who.

Q. You couldn't find out?

A. No, I haven't.

Q. You bought some ball bats up at the hardware store on the bluff?

A. I did not.

Mr. Heyl: That's all.

Mr. Knoblock: That is all.

1357 WALTER C. KEISER, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Mr. Keiser, will you please state your name?

Walter C. Keiser. A.

Are you one of the defendants in this case? Q.

A. I am.

What position do you hold with the Brotherhood O. of Locomotive Firemen and Enginemen?

Vice president.

Q. How long have you been in that capacity?

Since August last year.

I will ask you if you have attended any of the meetings of the striking employees of the T. P. & W. Railroad since the strike, or since the men went out on strike December 28, 1941?

I have attended most of them.

Did you attend meetings prior to that date? Yes, I attended meetings prior to that date.

Have you made any statements to these men with reference to violence in connection with the strike?

A. Yes, I have.

Mr. Heyl: I object; self-serving. The Court: Objection sustained.

What statements have you made, Mr. Keiser?

I have informed them there should be no violence.

How frequently have you so stated?

A. I will say at least fifty per cent of the meetings 1358 I have made that statement sometime during the meeting.

Have you at any time instigated, advised, suggest or manipulated any encounter or any meeting between the striking employees and the employees of the T. P. & W. wherein you have suggested violence be used?

A. I never have. Q. What has been What has been your position in that/regard?

Mr. Heyl: I object to this as self-serving.

The Court: He may answer.

That there should be no violence.

Have you ever been present, or have you ever observed, at any time any violence of any kind or character, either by physical force or by verbal threats by the striking employees toward the employees of the T. P. & W., or any of their private property?

A. No, I have not.

Q. In what capacity have you acted here in this matter?

A. In an advisory capacity.

Q. Is that the same capacity that the Brotherhood whom you represent acts in all strike matters?

A. That's correct.

Q. What has been the statements that you have made to the men with reference to picketing?

Mr. Heyl: I object to that as self-serving.

The Court: He may answer.

A. I have not directed the men in the picketing.

Q. I will ask you this—in what manner—will you describe to the court, if you know, how these men are placed on the picket line? By what process?

A. We have a committee that assigns the pickets

1359 for each twenty-four hour period.

Q. Do you mean the Brotherhood or the local people?

A. I mean the meetings of the strikers selects the com-

mittee.

Q. Do you have anything to do with the selection of that committee?

A. Nothing whatever.

Q. Do you have anything to do with the— Do you have anything to do with that matter as far as the committee is concerned?

A. No.

Q. I will ask you whether or not the Brotherhood whom you represent, the B. of L. F. & E., have offered to arbitrate this dispute.

Mr. Heyl: I object as immaterial.

The Court: It has been proved. I don't see how it would hurt or help either side.

He may answer.

A. Yes, we have agreed to accept arbitration. Mr. Knoblock: I think you may cross examine.

Cross-Examination by Mr. Heyl.

Q. Mr. Keiser, as I understand it, you and Mr. Coyle have been here for weeks in relation to this dispute and the strike?

A. That's correct.

Q. And you have known all of the operations of the strike and the pickets during that period of time?

A. I haven't known all of the operations of the strik-

ing pickets.

Q. You have known where they were sent? Did you not?

A. Not always.

Q. You knew that pickets were being sent to 1360 picket the train on January 2, did you not?

A. I did not.

Q. You knew the pickets were going to stop the engine 71, didn't you?

A. I did not.

Q. And you knew that the pickets were picketing the other railroads, did you not?

A. I knew we had a picket line at Main Street, East

Peoria.

Q. And you knew on December 31, 1941, that a number of the men who had met with you at the meetings had been accused of assaulting an employee of the railroad; did you not?

A. I read the newspapers, yes, sir.

Q. You read everyone of them?

A. I read most of them.

Q. And you knew on the evening of December 31 that Walter Kohtz, Walter McMullen, W. E. Causey, Todd and Carl Roskamp and C. L. Brown were arrested and accused of beating one of the employees of the T. P. & W.?

A. I knew that, yes; sir.

Q. Did you do anything about that? Did you ever talk to any of these men about it?

A. Did I ever talk to them? I went to East Peoria at

the time that it happened.

Q. You were over there when it happened?

A. No, after it happened, and they were taken to the police station.

Q. You got them out?

A. They stated they were not guilty.

Q. Did you get them out? Did you sign the bond?

A. I did not.

1361 Q. Do you know who signed the bond?

A. I couldn't say definitely; two of the members who own property in East Peoria.

Q. Did you say anything to those men, or any of the men, about that incident after that?

A. No. I have not interriewed the men and questioned

them about the incident.

Q. You never mentioned anything at meetings of this incident?

A. I told the men I had arranged for bond, and they

would be represented:

Q. I have asked if you talked with the men in subsequent meetings about beating up Mr. Merrill.

A. Not in subsequent meetings, no.

Q. Are you'in favor of violence in a labor association?

A. I am not.

Q. You are not objecting to an injunction that restrains people from destroying property?

A. I am against an injunction that prevents strikers

from properly protecting their interests.

Q. Do you think it is necessary for them to destroy the property to protect their interests?

A. It depends on what you call "destruction of prop-

erty"

Q. I call throwing stones at engines and knocking out headlights and things of that kind. Is that necessary to protect their interests?

A. I do not approve of violence in strikes.

Mr. Heyl: Read the question. (Question read by reporter.)

Mr. Knoblock: I object to that.

1362 The Court: He may answer.

Mr. Heyl: I think we have a right to show what he meant by "violence".

A. I would say not.

Q. You didn't say anything to any of these men that were accused of beating Mr. Merrill with reference to continuing that thing, did you?

A: I have told the men in a number of meetings there

should be no violence.

Q. I am talking about this specific thing. I am asking if you talked to any of these men about beating Merrill!

A. These men are not guilty until proven guilty.

Q. That is true under the law, but I am asking you a question. You didn't answer except by evasion. Did you talk with these men about beating Merrill?

A. I did not.

Q. You never mentioned that afterward at any union meeting, did you?

A. I did not.

Q. You have been making some public statements in the newspapers with reference to this strike, haven't you?

A. We have made a few signed statements.

Q. You made a statement in the newspapers there would be no emergency board appointed?

A. I have never made such a statement.

Q. Your associate, Mr. Coyle, did?

A. Not that I know of.

Q. On December 23 you issued a statement jointly, and had it published in the Peoria papers that there would be no emergency board appointed?

1363 A. No, sir.

Q. Did you do that?

A. No, sir.

Q. Have you read it in the paper?

- A. I have read a good many things in the paper that are not correct.
- Q. Did you read that statement in which they quoted you and Mr. Coyle that there would be no fact-finding board appointed to investigate this strike?

A. I don't recall having read that, and we couldn't make that statement because we do not appoint the fact-

finding board.

Q. If that statement was made, it was made without your authority, is that true?

A. That's right.

Q. Did you talk to these men about the incident down below the Allied Mills when they attempted to burn up an engine?

A. I did not.

Q. You heard about it, didn't you?

A. I read it in the paper.

Q. And you had meetings after that?

A. That's right.

Q. Did you say anything to the men, your strikers, with reference to that incident?

A. I told them there should be no violence.

- Q. Did you say anything about the incident of trying to burn up the locomotive?
- A. No, sir, because I don't think our men attempted to burn the locomotive.

Q. You think it just caught fire?

A. I think a lot of these things are fixed by carriers.

1364 Q. You are prejudiced against the carriers?

A. I might be against this particular carrier.

Q. You don't believe the men threw a stone at any of these engines or locomotives or cabooses at any time?

A. I don't know whether they did or not.

Q. After you found the newspapers had carried the statement that the locon of two was attacked by a mob of from fifteen to twenty-five men, did you say anything about that at the next meeting of the union?

Mr. Knoblock: I object to the word "mob"; no evi-

dence of that.

The Court: He asked if he read such a statement in the paper, if he did did he say anything about it.

A. Read the question, please. (Question read by reporter.)

A. I don't recall that I did.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

1365 FRANK W. COYLE, called on behalf of the defendants, and having been previously sworn, testified as follows, in answer to

Direct Examination by Mr. Knoblock.

Q. Mr. Coyle, state your name, will you?

A. Frank W. Coyle.

Q. And your residence? A. St. Paul, Minnesota.

Q. What capacity do you have with the Brotherhood of Railroad Trainmen?

A. Vice President.

Q. How long have you held that office?

A. Since July of last year.

Q. Now, Mr. Coyle, I will ask you if you have been present here in Peoria since the date that this strike went into effect on the 28th day of December, 1941.

A. Yes, sir.

Q. Were you here for a short period prior to the date!

A. Yes, I was.

Q. Have you made any statements to the men in meetings or any other time with reference to the conduct in this strike?

A. Yes, I have.

Q. And what have been your statements in that regard?

A. That the law of the Brotherhood was opposed to violence, and that we would not tolerate it.

Q. Have you made that statement to them more than

once?

A. Yes, several times.

Q. How frequently would you say you made that statement?

1366 A. Oh, possibly every third or fourth meeting, something like that, maybe every second meeting.

Q. Have you at any time arranged for, suggested, incited or in any way indicated to the striking employees of the T. P. & W. Railroad that they should resort to violence in this matter?

A. At no time have I ever indicated it.

Q. Have you indicated anything else in that regard with

reference to picketing?

A. In reference to picketing, I told them they should always comply with the law and not trespass in any way, and to be careful there would be no acts of violence on the picket line.

Q. Have you observed certain statements in the news-

papers with reference to acts of violence?

A. I have.

Q. What have you done in reference thereto at the meetings when that has been brought to your attention?

A. I remember on a couple of different occasions, when I observed in the newspapers there was news items concerning acts of violence, and I talked with the men and told them they had public support in this matter, and that the people of Peoria, in general, were behind them, and it would be to their interest, their best interest, to refrain from any acts of violence because we didn't want it, and I said I hoped none of the our members were committing these acts of violence because, if they did, they would turn public opinion against them.

Q. Have you at any time, Mr. Coyle, or the Brotherhood whom you represent, ever suggested or intimated to any of the striking employees that any violence of any kind or

character should be indulged in?

A. No, sir.

1367 Q. Who voted for the strike in this case?

A. The employees. So far as our organization, the conductors, brakemen, yardmen and switch tenders.

Q. Who set the date for the strike?

A. The employees; the general committee.

Q. How are the pickets assigned to the picket line?

A. Well, they are assigned by either the general chairman or somebody acting in his place, because, when the strike first started, I counselled with general chairman Newdigate, and suggested to him, or discussed with him, the advisability as to where we should have picket lines, and I told him that was his duty to take care of that.

Q. In what capacity have you appeared here in this

strike?

A. As a repesentative of President Whitney in an ad-

visory capacity.

Q. Is your position here in this strike any different than that taken by your Brotherhood in any other strike?

A. It is the same in all cases.

Q. And in your official position here you have acted in behalf of your Brotherhood, is that right?

A. Yes, sir.

Mr. Knoblock: I think you may cross-examine.

Cross-Examination by Mr. Heyl.

Q. As I understand you, then, Mr. Coyle, you do not approve of violence or trespass on the property of the railroad.

A. That's true.

Q. Then you have no objection to the court restraining the boys that have stoned or injured the property?

1368 A. I don't think there is any need of an injunction.

Q. Just answer my question. Do you have any objection to it?

Mr. Knoblock: I object to that.
The Court: Read the question.
(Question read by reporter.)
The Court: Objection sustained.

Q. Did you follow up the incidents that were reported to you and in the newspapers of specific men that were

charged with stoning or injury to the train or beating up the men?

A. I have answered that.

Q. Did you follow that up in each instance?

A. What do you mean by "follow up"?

Q. What did you do about it?

A. I talked to the men about it, and told them that I hoped they weren't responsible for it.

Q. You hoped that?

A. Yes.

Q. You said your Brotherhood wouldn't tolerate any violence?

A. Absolutely, no.

Q. Did you do anything in assisting the public authorities in finding out the men that were damaging or trespassing on this property?

A. I didn't think that was my duty.
Mr. Knoblock: I didn't hear that.

(Question and answer read by reporter.)

Q. I insist on an answer.

A. I think that is an answer.

The Court: That is an answer. The answer may stand.

Q. You couldn't do anything, could you?

1369 A. What could I do? I didn't do anything about it.

Q. Did you go and try to find out the truth about it?
Mr. Knoblock: I object.

The Court: He may answer whether he went.

A. I wouldn't know where to go.

Q. You wouldn't know where to go, but it was in the newspapers each day?

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did you read the newspapers as your associate, Mr. Keiser, did every day?

Mr. Knoblock: I object. How would be know?

The Court: Objection sustained.

Q. Did you read the newspapers?

Mr. Knoblock: I object.

The Court: He may answer.

A. Yes.

Q. Did you read in the newspapers violence was being charged while this strike was on?

A. On some few occasions; not every day, no.

Q. Did you make any effort to find out if it was true your men were doing that or not?

A. I believe I answered that question.

Q. That is the way you want to leave it, is it?

A. Yes, sir.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

Mr. Knoblock: That is all.

(Recess.)

1370 Mr. Knoblock: Your Honor, the defendants rest. The Court: The defendants rest?

Anything in rebuttal, gentlemen?

Mr. Heyl: I think we will rest, Your Honor, rather

than have this case go over.

The Above and Foregoing Was All the Evidence Offered in Chief on the Trial of Said Case on Behalf of the Defendants.

The Court: I will say, if you are all resting, gentlemen, I would like to hear in this case a discussion of each one of these defendants. It's rather difficult for me to remember the names of each one of these men. I have tried to take a few notes in defense of each one, and I can remember the testimony with regard to sonie of them, what they had done, and some had little or no proof about. I would like to hear each of your discuss that thing, together with any motions.

I take it the defense would want to file a motion. Since we have all rested, is there any objection to continuing the restraining order until Monday morning?

Mr. Knoblock: The defense has no objection. The Court: Has the plaintiff any objection?

Mr. Elliott: No, Your Honor.

The Court: Let the record show it is continued by 1371 consent. That is the only order.

Mr. Knoblock: Can we understand the restraining

order will not be continued ten days?

The Court: It will be heard Monday morning, and settled Monday morning.

9:30 in the morning suit you gentlemen?

Mr. Elliott: You don't need any written order?

I have have one prepared.

The Court: The rule both of you read said "except by consent".

Let the record show by consent of both parties. We don't care for any other order. You did consent.

Mr. Knoblock: That's right but, if the court will accommodate me to the extent that it will be extended on motion of the court.—

The Court: I think it must be by consent or good cause shown. I will sign this other order which shows cause. I take it it shows cause?

Mr. Elliott: Yes.

Mr. Knoblock: I would prefer the showing of cause.

(Mr. Elliott reads order.)

Mr. Elliott: I left the time and place blank.

The Court: We will date it until Monday afternoon. It might take you that long to get in an order. Three days? You don't count today?

Mr. Knoblock: No.

The Court: Until January 19 at 5 P. M. We will get rid of that before that.

(Discussion off the record.)

1372 Trial Adjourned at 5 o'clock P. M.

The Above and Foregoing Was All the Evidence Offered on the Trial of Said Case.

January 19, 1942.

Trial Resumed at 10 o'clock A. M.

Appearances:

Same as before.

.The Court: Do you want to be heard on this motion?

Mr. Knoblock: Yes.

Mr. Heyl: Before we proceed with this case, I would like to call the court's attention to the fact that, after the adjournment of this court last Friday, on Saturday evening one of the parties who testified in this case, an engineer, Mr. Funk, was attacked by two men with rifles who shot at him and at the locomotive, and I would like to make that proof in this case before the record is closed. I think this court should know the circumstances under which that dastardly conduct was carried on, and therefore I ask at this time that the record be opened, and that we be permitted to put Mr. Funk on the stand so that he may testify

to these facts. I think it should be in the record.

1373 The marshal knows about it because he was called into the matter immediately after and inspected the

engine, and knows what the facts are with reference to the bullets shot into the engine.

The Court: Wouldn't that be a violation of any injunc-

tion that might be issued, or restraining order?

Mr. Heyl: It is simply additional proof in support.

Mr. Knoblock: We want it understood we are denying that completely.

Mr. Heyl: You have denied everything.

Mr. Knoblock: So have you!

The Court: I think we will proceed.

Mr. Heyl: I want the record to show this offer is made. (By direction, closing arguments not transcribed.)

Closing Arguments recessed at 12:30 P. M.

Closing Arguments resumed at 1:30 P. M.

The Court: We seem to have reached the conclusion of this very lengthy and very well-tried law suit, and I say

that on the part of both of you.

There never was any more difficult case to decide than one involving the rights between the plaintiff and defendant in a suit of this sort. It is especially difficult, of course, because of the fact that there is, and always has been, a great deal of interest and a great deal of animosity and a great deal of feeling in regard to the rights of employer and employee. There has been in this case a great deal of

talk or discussion on the part of the lawyers that this 1374 court ought to take into consideration the contract

that has been submitted, or the working conditions that have been submitted, and the refusal of the plaintiff to abitrate this cause. There isn't any way I can see I can do anything of that sort. It is absolutely beyond my power to determine the rights between the plaintiff and defendants as to what the contract should be. I don't know what the working conditions submitted by the plaintiff were and, if I did, it wouldn't help me in determining the issues between these two parties, the plaintiff and the defendants.

The plaintiff has a right to refuse to arbitrate, just the same as the defendant refused to arbitrate at one time, if I remember the evidence correctly. The defendants refused once, and later agreed to arbitrate and the plaintiff

refused to arbitrate.

Gentlemen, I think you men, as lawyers, know there isn't any way the government of the United States could

pass a law compelling arbitration in a case of this sort. I don't think that would be constitutional. It might be the proper thing to do to arbitrate this cause. As far as the court is concerned and knows, it would be the proper thing to do, but I can't compel that sort of thing. I can't determine that question at all. There isn't anything for me to determine except the issue of fact that is presented in this particular case, and that issue is purely, first, has this court jurisdiction.

This court, of course, has jurisdiction in a great many matters. It only acquires jurisdiction in the violations,

as you heard this morning so frequently, of some par-1375 ticular law. The question has been raised that there isn't any particular law controlling because the con-

sin't any particular law controlling because the constitutional question of interference with commerce is not based upon a particular law, but is a part of the constitution that has been brought down for many years and has been interpreted by courts, and it has been determined positively that it isn't only over administration of it, but the absolute control.

I think we can find numerous cases (many, many cases have been read here wherein there isn't any question) that if it is interstate commerce and it is being interfered with forcibly and violently or by threats this court has jurisliction. That has been the finding of the courts, and is the finding of the court now.

Then the question arising under the Labor Act is, Has violence been used? Have there been threats of intimidation or something that might affect the people in or outside of this particular railroad not a factor, and has the plaintiff exercised all the power it could to obtain all the aid and assistance possible without calling on this court?

It was mentioned this morning (I think by Mr. Cassidy) it was the purpose of the National Labor Relations Act to get away from a great number of injunctions formerly issued in this court. It was a former growth of opinion among federal courts that you could go in and get injunctions and just about everything without any proof so that it made it especially unattractive from the viewpoint of a person an injunction is being asked against. In other

words, it is necessary for a plaintiff to come into 1376 court and prove violence has been done, or at the

time of the filing or prior thereto there was violence in the management of the business that resulted in injury to property or injury to person. In this particular case what do we find? I think, gentlemen of the Bar, you couldn't help but agree with me Merrill didn't jump out of that car for the purpose of fighting. They showed he was sitting on the floor. I don't think that was denied, and I think the witnesses for the defendants said he was on the floor and jumped out like a rabbit. The court could not believe that story, nothing except that when Merrill came out, either pulled or ordered out, he came out with fear rather than a desire to start a fight.

I know how those things occur. There was the heat and belief and feeling that they had rights and somebody was taking their jobs, but the law just doesn't permit that, and it occurs to the court, if something isn't done to prevent that sort of thing without denying the right of peaceful picketing and the rights of the employees, if the court doesn't do something and that should continue, if gasoline and rocks can be thrown into cabs and people assaulted on the street, it will result in more serious things than we have at the present time, so the thing to do is to determine what is peaceful picketing and what isn't. That sort of thing just isn't, and this court, or no other court, can permit that sort of thing.

This court doesn't want to deny any single member of these organizations or anybody here the right to 1377 peaceful picketing and these things they can do, and

I hope, after this temporary injunction is issued (and I am going to issue a temporary injunction against this sort of violence), the court won't be called upon to enforce the law because, if people are called in for violating this injunction-not from peaceful picketing (don't misunderstand me)-but violating this injunction or threatening to kill or injure, throwing gasoline or striking with rocks, there isn't anything this court can do to protect you. can't be done. Anything else, any peaceful picketing, any effort that you may make under, or any rights you have under, the law can be done, but I haven't any such right, and no other person has a right, to do that sort of thing. The protection of your jobs in a peaceful manner is never denied to you, and never should be denied to you, but if we continue with the kind of conduct I feel quite positively has been proved here, it would result in perhaps somebody going to jail for murder or something of that sort of thing, because it is purely a bad condition (and I think you wil agree it is a bad condition), but there have been some

persons brought in the court doesn't feel should be found

guilty of the offense.

I think a man named Cole only talked to a truck driver; 0. W. Kirk and C. H. Kirk, they talked about this matter, and the picture was taken.

Mr. Heyl: They were identified at two or three other

places.

The Court: I didn't understand they were forcible.
They said to the truck driver, "You shouldn't come in." A man name Feldt didn't have anything to do with

it, as I understand it.

I am going to give the benefit of the doubt to the two gentlemen that represent the organizations. I can't believe that those men would come here and do other than they said they met to do, and they said they didn't believe in this sort of thing, and I don't believe they did. They perhaps can do a little more toward assisting us in preserving law than they have done, but I am not going to find them guilty in this particular case, F. W. Coyle and W. C. Keiser.

As to all other defendants, a temporary injunction may

be drawn restraining them from any violence.

There was one man whose brother, some brother, was talked about here. This man Stetler— Who was some brother that was brought in as a defendant?

Mr. Knoblock: The organizations should not be en-

joined, Your Honor.

The Court: Yes, I think they shou^rd. I think there is no doubt about it. That is the only way to prevent it.

Mr. Elliott: There are two Kohtz brothers.

The Court: The other Kohtz was not identified.

Mr. Elliott: Walter Kohtz was.

The Court: The other Kohtz may be found not guilty. Mr. Knoblock. There is only one Kohtz a defendant.

The Court: You may prepare an order. Has it

1379 been submitted to counsel?

Mr. Elliott: I have not.

The Court: We will take a recess.

Mr. Elliott: We also have a finding of facts.

The Court: Submit it to counsel.

(Recess.)

Mr. Heyl: The plaintiff asks leave to amend the original complaint on the face of same by adding, after the name of the defendant, The Brotherhood of Railroad Trainmen, the words "Enterprise Lodge No. 27" in the title of

the case and also on the first page of the complaint in the third line thereof; and by adding, after the name of the defendant, Brotherhood of Locomotive Firemen and Enginemen, the words "Robert Mason Lodge No. 926" in the title of the case, and also on the first page of the complaint in the fifth line thereof.

Plaintiff also asks leave to amend the prayer of the complaint, on page 33, by adding, after the words, Brotherhood of Railroad Trainmen, in the first line of paragraph (A) the following: "Enterprise Lodge No. 27"; and by adding, after the words, Brotherhood of Locomotive Firemen and Enginemen, in the third line of said paragraph (A), the words "Robert Mason Lodge No. 926".

The Court: Leave granted.

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

Filed an. 15,

And afterwards, to-wit: on the 15th day of January, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Amendment to Complaint, which said Amendment was and is in the words and figures following, to-wit:

1381 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149)

AMENDMENT TO COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff, by its undersigned attorneys, and by leave of court first had and obtained files the following amendment to its complaint heretofore filed herein on January 3, 1942.

Amend said complaint filed January 3, 1942 by adding the following Paragraph immediately after Paragraph (22) of said complaint, said amended Paragraph being des-

ignated as Paragraph (221) as follows:

"(221) That prior to the effective date of said strike so called by said defendants and others and after negotiations between plaintiff's former employees and negotiations with the representatives of the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen representing the employees on plaintiff's road and mediation of the dispute between plaintiff and the defendants with the representative of the National Mediation Board had failed to accomplish an adjustment

of the dispute between the plaintiff and the defendants, plaintiff urged the National Mediation Board to rec-1382 ommend to the President of the United States the ap-

pointment of an emergency board and fact finding body in accordance with the provisions of the Railway Labor Act in the hope that the controversy between plaintiff and the defendants, and other employees of the same classes as the defendants named, could be adjusted but that the National Mediation Board failed and neglected to make such recommendation; that the request of the plaintiff for the recommendation of the appointment of an emergency board in accordance with the provisions of the Railway Labor Act was made in good faith for the purpose of endeavoring to adjust the differences between it and its employees and to avoid the possibility of a strike; that notwithstanding such request on the part of the plaintiff, no emergency board or fact finding body was appointed."

(s) John M. Elliott, (s) Clarence W. Hevl.

Attorneys for the Plaintiff.

John M. Elliott,

1401 Alliance Life Building,

Peoria, Illinois,

C. W. Hevl.

1

(Seal)

Central National Bank Building,

Peoria, Illinois,

Attorneys for the Plaintiff.

1383 State of Illinois County of Peoria

Geo. P. McNear, Jr., being first duly sworn on oath, deposes and says that he is President of the Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause; that he has read the above and foregoing amendment to the complaint and that the matters and things therein set forth are true.

(s) Geo. P. McNear, Jr.

Subscribed and sworn to before me this 15th day of January, A. D. 1942.

(s) Esther M. Schulthes, Notary Public.

Endorsed: Filed Jan. 15, 1942, G. W. Schwaner, Clerk.

Filed Jan. 15, 1942. 1384 And afterwards, to-wit: on the 15th day of January, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Motion by Defendants to vacate order of January 8, 1942 extending the Temporary Restraining Order to January 17, 1942, to dismiss the Complaint herein filed and to deny the application of plaintiff for a Temorary Injunction, which said Motion was and is in the words and figures following, to-wit:

1385 IN THE DISTRICT COURT OF THE UNITED STATES.

• (Caption—P-149). • •

MOTION.

Now comes all of the defendants herein and each of them individually by George Donaldson and Cassidy, Knoblock & Sloan, their attorneys, at the close of the evidence introduced in behalf of plaintiff at the hearing on its application for a temporary injunction and moves the court to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction and for grounds of said motion states:

(1) That on January 3rd, 1942 this court granted a temporary restraining order without notice against these defendants and then on January 8th, 1942, entered an order extending said order to January 17th, 1942, which said order is invalid and void under the terms of Title 29 § 107 U. S. C. A., which provides that "Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five

days."

(2) That the complaint filed in this court is insufficient in law to state a claim upon which the relief prayed for

may be granted because:

1386 (a) Said complaint does not allege facts showing any jurisdiction of a District Court of the United States over said cause in that said complaint neither alleges facts showing diversity of citizenship between plaintiff and defendants nor fact showing that the suit "arises under the Constitution or laws of the United States or

treaties made * * "" or under any other circumstances which give a District Court of the United States jurisdiction of the cause.

Said complaint alleges facts showing that the case grows out of a labor dispute but does not allege fact showing that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained; does not allege facts showing that substantial and irreparable injury to plaintiff's property will follow; does not allege facts showing that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of the relief than will be inflicted upon defendants by the granting of the relief; does not allege facts showing that plaintiff has no adequate remedy at law; does not allege facts showing that the public officials charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; does not allege facts showing that plaintiff has complied with all obligations imposed by law upon it, or has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(3) That the evidence introduced in behalf of plaintiff fails as to each and all of said defendants to prove that plaintiff is entitled to the relief prayed for in said com-

plaint.

That the evidence introduced in behalf of 1387 plaintiff fails to prove as to each and all of said defendants that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained; that substantial and irreparable injury to plaintiff's property will follow: that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; that the publie officers charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; that plaintiff has complied with all obligations imposed by law on it and that it has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration; that as to the defendant Brotherhoods and its officers and members said evidence does not show that any acts committed were done so upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof.

/s/ George Donaldson,

/s/ Cassidy, Knoblock & Sloan,
- Attorneys for Defendants.

Endorsed: Filed Jan. 15, 1942. G. W. Schwaner, Clerk.

Entered 1388 And afterwards, to-wit: On the 15th day of JanJan. 15.
1942 uary, A. D. 1942, the following further proceedings
were had in said court and entered of record in said cause,
to-wit:

1389 IN THE DISTRICT COURT OF THE UNITED STATES.

• (Caption—P-149) •

Thursday, January 15, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 15th day of January, A. D. 1942, come again the parties to this cause by their attorneys, and the further hearing on the plaintiff's application for temporary injunction is hereby resumed. And now at the conclusion of the plaintiff's evidence, the plaintiff moves the court for leave to file an amendment to the complaint herein, and the court having heard said motion and being fully advised in the premises, it is ordered by the court that said motion be and the same is hereby allowed, and the amendment to the complaint is hereby filed. Now come the defendants herein and present their motion to vacate the order entered herein on January 8th, 1942, extending the temporary restraining order to January 17th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction, and the court having heard said motions and being fully advised in the premises, it is ordered by the court that same be and are hereby denied. And now the hour for adjournment having arrived, the further hearing hereof is postponed until 9:30 o'clock a. m. tomorrow.

1390 And afterwards, to-wit: On the 15th day of January, A. D. 1942, there was filed in the office of the
1942.

clerk of said court in said cause, a certain Amendment to
Complaint, which said Amendment was and is in the words
and figures following, to-wit:

1391 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption-P-149) •

AMENDMENT TO COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff, by its undersigned attorneys, and by leave of court first had and obtained files the following amendment to its complaint heretofore filed herein on January 3, 1942.

Amend said complaint filed January 3, 1942 by adding the following Paragraph immediately after Paragraph (22) of said complaint, said amended Paragraph being des-

ignated as Paragraph ($22\frac{1}{2}$) as follows:

"(22½) That prior to the effective date of said strike so called by said defendants and others and after negotiations between plaintiff's former employees and negotiations with the representatives of the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen representing the employees on plaintiff's road and mediation of the dispute between plaintiff and the defendants with the representative of the National Mediation Board had failed to accomplish an adjustment of the dispute between the plaintiff and the defendants, plaintiff urged the National Mediation Board to

recommend to the President of the United States the 1392 appointment of an emergency board and fact finding body in accordance with the provisions of the Railway Labor Act in the hope that the controversy between plaintiff and the defendants, and other employees of the same classes as the defendants named, could be adjusted but that the National Mediation Board failed and neglected to make such recommendation; that the request of the plaintiff for the recommendation of the appointment of an emergency board in accordance with the provisions of the Railway Labor Act was made in good faith for the purpose of endeavoring to adjust the differences between it and its employees and to avoid the possibility of a strike;

that notwithstanding such request on the part of the plaintiff no emergency board or fact finding body was appointed."

> /s/ John M. Elliott, /s/ Clarence W. Heyl,

Attorneys for the Plaintiff.

John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois, and

C. W. Heyl,

(Seal)

Central National Bank Building, Peoria, Illinois, Attorneys for the Plaintiff.

1393 State of Illinois, County of Peoria.

Geo. P. McNear, Jr., being first duly sworn on oath, deposes and says that he is President of the Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause: that he has read the above and foregoing amendment to the complaint and that the matters and things therein set forth are true.

/s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 15th day of January, A. D. 1942.

/s/ Esther M. Schulthes, Notary Public.

Endorsed: Filed Jan. 15, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 16th day of Janu- Entered 1394 ary, A. D. 1942, at 5 o'clock p. m., a certain Order 1942. Extending and Continuing in force Temporary Restraining Order until January 19, 1942, at 5 o'clock p. m., was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1395

IN THE UNITED STATES DISTRICT COURT.

(Caption—P-149)

ORDER EXTENDING AND CONTINUING IN FORCE TEMPORARY RESTRAINING ORDER.

This cause now coming on to be heard upon the application of the plaintiff for a temporary restraining injunction as prayed in the complaint, and for an order extending and continuing in force the temporary restraining order entered herein January 3, 1942 and extended and continued in full force and effect for a period of nine (9) days from January 8, 1942 at 3:15 o'clock p. m.; and the court having heard the evidence offered on behalf of the plaintiff in support of its application for temoprary injunction and a part of the evidence offered on behalf of the defendants and it appearing to the court that the hearing on the application for temporary injunction cannot be concluded and a decision rendered thereon before the expiration of said temporary restraining order heretofore issued, finds that it is necessary that said temporary restraining order be extended and continued in full force and effect for a period of three (3) days from this date; and the counsel for defendants having objected to the extension of said temporary restraining order and the court having overruled said objection.

1396 Upon Consideration Thereof, It Is Ordered, Adjudged And Decreed that the temporary restraining order heretofore entered herein, under date of January 3, 1942 at 3:50 o'clock p. m. and extended and continued in full force and effect until January 17, 1942 at 3:15 o'clock p. m., be and the same is hereby extended and continued in full force and effect until January 19, 1942, at 5 o'clock P. M., pending the completion of the hearing of plaintiff's application for temporary injunction herein and the deci-

sion of this court upon said application.

This order is entered extending and continuing in full force and effect said temporary restraining order because of the inability of the court to complete the hearing on the application of the plaintiff for a temporary injunction and the decision of the court on such application.

(s) J. Leroy Adair, Judge.

Entered: January 16, 1942, at 5 o'clock, p. m.

Endorsed: Filed Jan. 16, 1942, at 5 p. m. G. W. Schwaner, Clerk.

Filed Jan. 19, 1942.

And afterwards, to wit: on the 19th day of January, A. D. 1942, there was filed in the office of the clerk of said Court, a certain Motion by Defendants to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and also the order entered January 16th, 1942, extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction, which said Motion was and is in the words and figures following, to-wit:

1398 IN THE DISTRICT COURT OF THE UNITED STATES.

* (Caption—P-149) * *

MOTION.

Now comes all of the defendants herein and each of them individually by George Donaldson and Cassidy, Knoblock & Sloan, their attorneys, at the close of all the evidence, at the hearing on the application for a temporary injunction and moves the court to vacate the order entered herein on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and also the order entered January 16th, 1942 extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny the application of plaintiff for a temporary injunction and for grounds of said motion states:

(1) That on January 3rd, 1942 this court granted a temporary restraining order without notice against these defendants and then on January 8th, 1942 entered an order extending said order to January 17th, 1942 and then on January 16th, 1942 entered an order extending said restraining order to January 19th, 1942 which said orders are invalid and void under the terms of Title 29 § 107 U.S. C. A., which provides that "Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days."

(2) That the complaint filed in this court is insufficient in law to state a claim upon which the relief prayed

1399 for may be granted because:

(a) Said complaint does not allege facts showing any jurisdiction of a District Court of the United States over said cause in that said complaint neither alleges facts showing diversity of citizenship between plaintiff and defendants nor facts showing that the suit "arises under the Constitution or laws of the United States or treaties made. "" or under any other circumstances which give a District Court of the United States jurisdiction of the cause.

Said complaint alleges facts showing that the case grows out of a labor dispute but does not allege facts showing that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained; does not allege facts showing that substantial and irreparable injury to plaintiff's property will follow; does not allege facts showing that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of the relief than will be inflicted upon defendants by the granting of the relief; does not allege facts showing that plaintiff has no adequate remedy at law; does not allege facts showing that the public officials charged with the duty, to protect plaintiff's property are unable or unwilling to furnish adequate protection; does not allege facts showing that plaintiff has complied with all obligations imposed by law upon it, or has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(3) That the evidence introduced in behalf of plaintiff fails as to each and all of said defendants to prove that

plaintiff is entitled to the relief prayed for in said com-

plaint.

That the evidence introduced in behalf of (4) plaintiff fails to prove as to each and all of said defendants that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained; that substantial and irreparable injury to plaintiff's property will follow: that as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; that the public office charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection; that plaintiff has complied with all obligations imposed by law on it and that it has not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration; that as to the defendant Brotherhoods and its officers and members said evidence does not show that any acts committed were done so upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof.

s/ George Donaldson,

's Cassidy, Knoblock & Sloan, Attorneys for Defendants.

Endorsed: Filed Jan. 19, 1942. G. W. Schwaner, Clerk.

Entered Jan. 19, 1942. 1401 And afterwards, to-wit: on the 19th day of January, A. D. 1942, the following further proceedings were had in said court and entered of record in said cause to-wit:

1402 In the District Court of the United States.

(Caption—P-149)

Monday, January 19, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

Come again the parties to this cause by their respective attorneys and the further hearing on the application for a temporary injunction is resumed and after hearing the arguments of counsel and at the close thereof the defendants herein by their attorneys move the court to vacate the order entered herein on January 8, 1942 extending the temporary restraining order to January 17, 1942 and also, the order entered herein on January 16, 1942 extending the temporary restraining order to January 19, 1942, to dismiss the complaint herein and to deny the application of the plaintiff for a temporary injunction, and the court having duly considered the said motions and being fully advised in the premises, it is ordered by the court that each of the said motions be and is hereby denied.

On motion of the said plaintiff by its attorneys, it is ordered by the court that leave be and is hereby given the said plaintiff to amend the original complaint on the face of same by adding after the name of the defendant, the Brotherhood of Railroad Trainmen, the words "Enterprise Lodge No. 27" in the title of the case and also on the first page of the complaint in the third line thereof;

and by adding after the name of the defendant, 1403 Brotherhood of Locomotive Firemen and Enginemen, the words "Robert Mason Lodge No. 926" in the title of the case and also on the first page of the complaint in the fifth line thereof.

It is further ordered by the court on motion of the said plaintiff by its attorneys that leave be and is hereby given the said plaintiff to amend the prayer of the complaint herein on page 33 thereof, by adding, after the words, Brotherhod of Railroad Trainmen, in the first line of paragraph (a), the following: "Enterprise Lodge No. 27", and by adding, after the words, Brotherhood of Locomotive Firemen and Enginemen, in the third line of said paragraph (A), the words "Robert Mason Lodge No. 926".

1404 And afterwards, to-wit: on the 19th day of January, A. D. 1942, certain Finding of Facts and Conclusions of Law were filed in the office of the clerk of said court and entered of record in said cause, which said Findings of Fact and Conclusions of Law were and are in the words and figures following, to-wit:

Filed 1405 n. 19, 1942.

IN THE UNITED STATES DISTRICT COURT. (Caption—P-149)

FINDINGS OF FACT.

The court having heard the evidence produced in open court in support of the complaint of the plaintiff finds and

files herein the following findings of fact:

(a) The plaintiff is a corporation duly organized and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the States of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the United States; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended, and as such carrier subject to and included within the words "War Utilities" as defined by the Federal Statutes.

(c) The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various branches or spurs connecting with other in-

terstate railroad carriers.

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon if by the laws of the United

States relating to Labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M., on Sunday, December 28, 1941; and that said employees were withdrawn from the service of the plaintiff at Six P. M., on Sunday, December 28, 1941, and have since refused to return to their respective places of

employment with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials, arms, armaments, ammunition, livestock, clothing, food, foodstuffs, fuel supplies, munitions and other articles and ingredients thereof intended for, or suitable for, the use of the United States or associated nations in connection with the conduct of war; that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being prevented, from the transportation of such articles in

interstate commerce.

That the defendants and other persons who have congregated with them have come upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason of their fear of violence and injury; and the said defendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each of the following days: December 29, 1941, December 30, 1941, December 31, 1941 and January 2, 1942.

(g) That the defendants, on or about December 29, 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plaintiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon its said rail-

road.

(h) That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them, have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles and have, by force and threats of personal violence, prevented employees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said employees of the plaintiff in the event said employees

1408 continued in their said employment and have threatened other employees by ordering them to remain away from the premises of the plaintiff and not return to

their respective places of employment.

(i) That by reason of the unlawful and unauthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the move-

ment of interstate commerce.

- That on December 31, 1941, and again on January 2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants traveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and threw stones. bricks and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.
- (k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Can-

m. Fulton County, Illinois; and at a point near the switch ack of the Allied Mills two of said defendants wilfully nd maliciously threw glass whiskey bottles with benzine gasoline into the cab of said engine drawing said trains rusing the said substance to explode and set fire to the aid locomotive engine and inflicting serious burns upon

the engineer and other employees of the plaintiff

109 on said engine.

That on January 2, 1942, certain of said de-(1) endants threatened the employees of the plaintiff by adising them that if they, the said employees, took the train f the plaintiff out of Peoria to the western division of aid railroad, that said employees would never get back, eaning and intending to commit bodily injury or harm to nd employees in the event that they, the said employees, ttempted to operate said train of the plaintiff from Peoria Keokuk, Iowa; and at various points along said railroad ght of way the said defendants congregated and made ivers other threats to the employees of said plaintiff as nev were attempting to operate said train from Peoria o Keokuk, Iowa; and said defendants traveled in automoiles along the highway adjacent to and parallel with aid railroad, and at many points where said train was equired to stop while in the county of Peoria, the said efendants continued their threats and acts of intimidaon and violence and threw stones, bricks, clubs and other issiles at said train and the crew operating the same; nd all of said acts found in this paragraph occurred beore the said train described in the preceding paragraph eached the point near the switch track of the Allied Mills, hen the attempt was made by certain of said defendants burn said locomotive and injure the employees of the laintiff therein riding; that all of the acts found to have een committed and set forth in this and preceding pararaphs resulted in the delay and interruption of the inrstate commerce business of said plaintiff, and if the ud unlawful acts and threatened continuation of similar nlawful acts is not restrained by this Court, the prosecuon of the business of the plaintiff as an interstate carrier ill be entirely prevented. (m) That on December 29, 1941, the said defendants

reased the high rail on a curve in the plaintiff's railroad track on New Philadelphia hill in the county of Mc-10 Donough, in the State of Illinois, and that when the engine and train of the plaintiff reached said greased

rail, the engine and train were caused to slip and slide; that the sail defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plaintiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon, Webster, Leonard, Forrest, LaHogue, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover or ascertain that said switches had been thrown; and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss and damage to the property of the plaintiff and injury to the persons operating said trains.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said

railroad.

(p) That on December 29, 1941, on December 31, 1941, and January 2 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interstate connecting railroads, were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered to the plaintiff might be transported on the railroad of the plaintiff, and

which said cars then and there contained interstate 1411 commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless

the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interstate carriers while said crews are attempting to make delivery

of interstate commerce to plaintiff.

(q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts;

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the

transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

(v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in con-

troversy in this cause is of a civil nature, and exceeds, 1412 exclusive of interest and costs, a sum in excess of

Three Thousand Dollars (\$3,000.00).

(w) That said defendants, or some one, or more of them, at various times since the 29th day of December, 1941, and continuing up until the time of the filing of this. complaint, have been guilty of acts of violence and threats of violence against various employees of the plaintiff and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said de-, fendants have threatened that they will continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court; and the Court finds from the sworn evidence heard upon hearing of this application that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them.

(x) That said defendants, or some one or more of them, beginning on the 29th day of December, 1941 and continuing until the 3rd day of January, 1942, at the time of the entry of the temporary restraining order entered herein, by threats of violence and acts of violence as against plaintiff and its employees and its property, and by threats of continued acts of violence since that time, have interfered with the plaintiff in the handling of interstate commerce on its railroad and from the delivery to it by connecting lines of interstate commerce under and in accordance with the "Act to Regulate Commerce," and all acts amendatory and supplementary thereto.

(y) That unless the defendants are enjoined they will, by their acts of violence and threats of violence, confinue to interfere with the plaintiff and its employees in the handling of interstate commerce under an Act of Congress,

namely, "An Act to Regulate Commerce," and all 1413 acts amendatory and supplementary thereto, and will interfere with the delivery of connecting carriers of cars carrying interstate commerce to the plaintiff.

(z) That this Court has jurisdiction of the parties to and of the subject matter involved in this suit; that the movement of interstate commerce has been prevented and is being prevented by the action of the defendants, or some one or more of them.

Conclusions of Law.

(1) That said defendants, or some one or more of them, by their threats of violence, acts of violence and continued threats of violence, have interfered with and will continue to interfere with the facts of the plaintiff in handling interstate commerce in accordance with the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all acts amendatory and supplementary thereto, and that the acts and threats of the defendants are unlawful and should be enjoined.

(2) That plaintiff is bound under the terms of the United States Code Annotated, Title 25, Sections 102, 103, 104, 105, 106 and 107, and the provisions of the Railway Labor Act, to permit its employees free agency in the matter of the choice of labor union or organization to act

as their representatives.

(3) Plaintiff is entitled to a writ of injunction pendente

lite of this Court restraining and enjoining the defendants, and each of them, as well as their officers, agents, employees, associates and confederates, from doing the acts complained of in its said complaint.

Dated January 19, A. D. 1942.

/s/ J. Lerov Adair. Judae.

Endorsed: Filed Jan. 19, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 19th day of Janu- Entered ary, A. D. 1942, at 5 o'clock p. m., a certain Order for 1942. Temporary Injunction was filed in the office of the clerk of said court and entered of record in said cause; which said Order was and is in the words and figures following, to-wit:

1476 . In the United States District Court. . (Caption-P-149)

ORDER FOR TEMPORARY INJUNCTION.

This cause now coming on to be heard upon the verified complaint of the plaintiff herein for a temporary injunction, the temporary restraining order heretofore issued herein setting the application for temporary injunction for hearing on this date, the return of the Marshal showing service of said temporary restraining order on the defendants, as well as the mailing of a copy of said restraining order by the Clerk of this Court pursuant to the order of this Court to the Sheriffs of the counties of Peoria, Tazewell, McLean, Livingston, Ford, Iroquois, Fulton, McDonough, Hancock, Henderson and Woodford, being the law enforcing officers, and to the Chiefs of Police of the various cities and villages located upon the line of plaintiff's railroad; and the Court having heard oral testimony under oath produced in said verified complaint and testimony in opposition thereto, and the Court having considered the same, upon consideration thereof, finds:

That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained. 1416 as set forth in said verified complaint, by persons, associations or organizations named defendants to

said complaint, making the threats or committing the unlawful acts;

(2) That substantial and irreparable injury to plaintiff's property will follow, including interference with the

transportation of interstate commerce;

(3) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

4) That plaintiff has no adequate remedy at law; and

(5) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees

of plaintiff.

(6) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three Thousand (\$3,000.00) Dollars:

(7) And the Court having made its findings of fact

herein,

It Is Now, Therefore, Hereby Duly Ordered, Adjudged And Decreed By The Court that the said defendants in said cause, namely Brotherhood of Railroad Trainmen, Enterprise Lodge #27, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Reiman, G. L. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, and all persons to whom knowledge of this Temporary Injunction or any writ is

sued pursuant hereto shall come, be and each and 1417 all of them are hereby temporarily commanded, en-

joined and restrained from:

(1) Assaulting or attempting to injure by violence, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the plaintiff;

(2) intimidating or attempting to intimidate, by force or violence or personal assault, employees or officers of the plaintiff to keep them from returning to work and continu-

ing their work with the plaintiff, or those desiring to enter

the employ of the plaintiff;

(3) Congregating on picket lines in the vicinity of the premises of the plaintiff in numbers in excess of the number fixed by order of the Court, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those desiring to work for the plaintiff, from entering or reaching the premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff by violence or threats of violence in the operation of its railroad, or the receipt of, transportation or delivery of interstate freight consigned to it or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the operation of plaintiff's railroad.

(5) From co-operating, confederating and conspiring for the purpose of in any way interfering by force or violence or threats of force or violence with the plaintiff in the handling of war and national defense material, including arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions and all other articles of whatever description, and any part or ingredient thereof, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from

interfering by force or violence or threats of force or 1418 violence with the handling of any and all material on

its trains consigned or moving in interstate com-

(6) From congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent, by threats or intimidation or violence, or threats of violence, any person from engaging in or remaining in the employ of the plaintiff.

(7) Singly or in combination or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force or intimidation, or by force and violence or threat of violence, to any person being employed by the plaintiff, or engaged in or remaining in the employment of the plaintiff or in performing any business, labor or duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plaintiff, or about to enter the employ of the plaintiff, not to remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threats of violence with the movement or passage of any person toward, to, upon or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate commerce.

(11) By violence or threat or violence, molesting or threatening any member of the family of any employee or officer, or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family of any

such employee or officer.

1419 (12) Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with the intention of committing any act of violence upon any employee or officer of the plaintiff or any one desir-

ing to enter the employ of the plaintiff.

- at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and emjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.
- (14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence of threat of force or violence seeking to prevent employees of

the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or attempting to damage or injure any of the property of the plaintiff used in the transportation of Interstate Commerce including any other property of the plaintiff.

(16) From destroying or attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in

the transportation of freight in interstate commerce.

(17) From tampering with, damaging or destroy-

ing, or attempting to damage or destroy, any portion of the roadway, ballast, tie and track structure, bridge, culvert, building, signal, telegraph line, locomotive, car, or any other building, structure, piece of machinery or

equipment used by plaintiff in its business.

The plaintiff shall file an undertaking with adequate security in an amount in the sum of Five Thousand Dollars (\$5,000.00) conditioned that it recompense those enjoined for any loss, expense, or damage caused by the issuance of this temporary injunction, including all reasonable costs, together with reasonable attorneys' fees and expenses of defense against the granting of this temporary injunction, if it shall be held to have been improvidently

granted by the further order of this Court.

Nothing herein contained shall be contrued to prevent (1) ceasing or refusing to perform any work to remain in any relation of employment; (2) becoming or remaining a member of any labor organization or of any employer organization regardless of any such undertaking or promise as is described in Section 103 (Act March 23, 1932, Chapter 90, Sec. 3, 47 Stat. 70 (29 U. S. C. A. Par. 103); (3) paying or giving to or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance or other moneys or things of value; (4) by all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in or in prosection of any action or suit in any court of the United States or

in any State; (5) giving publicity to the existence of or the facts involved in any labor dispute, whether by advertising, speaking, patroling, or by any other method not involving fraud or violence; (6) assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; (7) advising or notifying any person of an intention to do any of the acts heretofore specified in this paragraph; (8) agreeing with any other person to

do or not to any of the acts heretofore in this para-1421 graph stated; and (9) advising, urging or otherwise

causing or inducing without fraud or violence, the acts heretofore in this paragraph specified, regardless of any such undertaking or promise as is described in Section 103

of this chapter.

Nothing herein shall prevent the defendants from having not to exceed the total of Seven (7) persons act as pickets at each of the points of entrance to the properties and premises of the plaintiff, namely, at Main St., Head of lane and Nickel Plate Crossing in East Peoria and Union Station in Peoria, but said pickets shall be unarmed and shall not carry or display, clubs or other instruments of violence, and shall not at any time resort to violence or threats of violence in preventing or attempting to prevent employees or others entering or leaving the premises of the plaintiff, and said pickets shall not by violence or threat of violence intimidate or attempt to intimidate any person in having free access, ingress and egress to and from the premises of the plaintiff.

(s) J. Leroy Adair,

Judge.

Dated January 19, 1942, at 5 o'clock p. m.

Endorsed: Filed January 19, 1942, at 5 o'clock p. m. G. W. Schwaner, Clerk.

1422 And afterwards, to-wit: on the 19th day of January, A. D. 1942, a certain Bond was filed in the office of the clerk of said court and approved by the Court, which said Bond and Approval was and is in the words and figures following, to-wit:

1423 IN THE DISTRICT COURT OF THE UNITED STATES. • (Caption—P-145) • •

Filed Jan. 19, 1942.

Know All Men By These Presents, That Toledo, Peoria & Western Railroad, as principal, and Geo. P. McNear, Jr., as surety, are held and firmly bound unto the defendants in the above entitled cause in the penal sum of Five Thousand Dollars (\$5000.00), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and firmly by these presents.

Witness our hands and seals this 19th day of January,

A. D. 1942.

The condition of the above obligation is such that whereas, Toledo, Peoria & Western Railroad as plaintiff in the above entitled cause has filed its complaint against the defendants and has made application to the court for the issuance of a temporary injunction against the defendants pending the hearing of the application for a temporary

injunction; and

Whereas, the District Court of the United States for the Southern District of Illinois, Northern Division, has granted its temporary injunction herein pending final hearing in this cause on condition, however, that said plaintiff shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined or restrained for any loss, expense or damage caused by the improvident or erroneous issuance of such temporary injunction, including all reasonable cost (together with a reasonable attorney's fee) and expense of defense incurred by reason of the granting of any injunctive relief sought in this proceeding and subsequently

denied by the court.

Now, Therefore, if said Toledo, Peoria & Western Railroad shall well and truly recompense the defendants enjoined or restrained for any loss, expense, or damage incurred by the improvident or erroneous granting of such temporary injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense incurred against such temporary injunction or against the granting of any injunctive relief granted in this proceeding and subsequently denied by the court; then this obliga-

tion to be void, otherwise to remain in full force and effect.

The principal and surety herein submit themselves to the jurisdiction of the court for the purpose of enforcing the conditions of this bond if it shall be held that the granting of the temporary injunction was improvident or erroneous or if the granting of injunctive relief in this proceeding is subsequently denied by the court.

Toledo, Peoria & Western Railroad By Geo. P. McNear, Jr. /s/

(Corporate Seal)

/s/ Geo. P. McNear, Jr. (Seal)

Attest:

Louis Rider /s/ Assistant Secretary.

1425 State of Illinois, County of Peoria. \} ss.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid, do hereby certify that Geo. P. McNear, Jr., President of Toledo, Peoria & Western Railroad, and personally known to me to be said officer, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as the free and voluntary act of said Toledo, Peoria & Western Railroad for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of

January, A. D. 1942.

(Notary Seal) /s/ Esther M. Schulthes, Notary Public.

State of Illinois. County of Peoria.

I, Esther M. Schulthes, a Notary Public in and for said county and State aforesaid, do hereby certify that Geo. P. McNear, Jr., personally known to me to be the same person who signed the above and foregoing instrument as surety, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial sea! this 19th day of January, A. D. 1942.

(Notary Public)

/s/ Esther M. Schulthes, Notary Public.

1426 State of Illinois, County of Peoria.

Geo. P. McNear, Jr., being first duly sworn, upon oath, deposes and says that he is the owner of real and personal property in the County of Peoria and State of Illinois of the value in excess of Ten Thousand Dollars (\$10,000.00) over and above all encumbrances, exemptions and liens; that he makes this affidavit for the purpose of qualifying as surety in the above and foregoing bond.

· /s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 19th day of January, A. D. 1942.

/s/ Esther M. Schulthes, Notary Public.

(Notary Seal)

(And on the Back of Said Bond, Appeal the Following: 1-19-42 Bond approved. /s/ J. Leroy Adair.

Endorsed: Filed Jan. 19, 1942, G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 2nd day of Feb- Entered ruary, A. D. 1942, a certain Order or Rule to Show Feb. 1942. Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1428 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149)

ORDER OR RULE TO SHOW CAUSE.

On petition of Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause, and the affidavit attached thereto and made a part of said petition, and the sworn statements of Jean L. Dean and Charles Pschirrer attached to said petition, and the affidavits of Fred E. Sidener and William Wheeler, and the record of the arrest of the said Delmar Newdigate attached to said petition, charging contempt of court against H. J. Dilley, Delmar Newdigate and Paul Brokaw-for violation of the temporary

injunction heretofore issued herein.

It Is Ordered that the said H. J. Dilley, Delmar Newdigate and Paul Brokaw be and they are hereby ordered and directed to appear before this Court at Peoria, Illinois, on the 10 day of Feb., A. D. 1942 at 2 o'clock P. M., to show cause, if any they have, why they should not be punished for contempt of Court for the violation of the temporary injunction heretofore issued herein on January 19, 1942 as more fully appears from the petition of the Toledo, Peoria & Western Railroad, and the affidavits of William Wheeler and Fred E. Sidener, and the statements of Jean L. Dean and Charles Pschirrer, and the record of the arrest of the said Delmar Newdigate, copies of which are hereby ordered to be served upon the said H. J. Dilley, Delmar Newdigate, and Paul Brokaw.

Dated this 2 day of Feb., A. D. 1942.

/s/ J. Leroy Adair, District Judge.

Endorsed: Filed Feb. 2, 1942, G. W. Schwaner, Clerk.

Entered Feb. 9, 1942 And afterwards, to-wit: on the 9th day of February, A. D. 1942, a certain Order Directing United States Marshal to Enforce Provisions of Temporary Injunction was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1430 IN THE DISTRICT COURT OF THE UNITED STATES.

* (Caption—P-149) * *

ORDER DIRECTING UNITED STATES MARSHAL TO ENFORCE PROVISIONS OF TEMPORARY INJUNCTION.

Before the Honorable J. Leroy Adair, Judge:

This cause now coming on to be heard upon the motion of the Toledo, Peoria & Western Railroad, plaintiff, for an order directing the United States Marshal for the Southern District of Illinois to enforce the provisions of the temporary injunction heretofore issued on January 19, 1942; and it appearing to the Court that after the issuance of the order for temporary injunction herein on January 19, 1942 a certified copy of said order was duly served upon the defendants and others by the United States Marshal; that notwithstanding the issuance of said order for temporary injunction and the service of a certified copy thereof upon the defendants and others that some of the defendants are refusing to comply with or obey the terms of said temporary injunction, and the Court now being fully advised in the premises, upon consideration thereof

It/Is Ordered, Adjudged and Decreed that the United States Marshal for the Southern District be and he is hereby directed to take such steps as may be necessary to enforce the provisions of the temporary injunction here-

tofore issued herein on January 19, 1942.

It Is Further Ordered that if it becomes necessary 1431 that said United States Marshal shall employ additional deputies for the purpose of said temporary injunction.

It is Further Ordered that all expenses in enforcing the provisions of said temporary injunction shall be paid by the plaintiff and taxed as costs in this case.

Enter: Feb. 9th, 1942.

J. Leroy Adair /s/ Judge.

Endorsed: Filed Feb. 9, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 9th day of Febru-Entered ary, A. D. 1942, a certain Order or Rule to Show 1942. 1432 Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1433 IN THE DISTRICT COURT OF THE UNITED STATES. (Caption-P-149)

ORDER OR RULE TO SHOW CAUSE.

On petition of the Toleda, Peoria & Western Railroad, plaintiff in the above entitled cause, and affidavit attached thereto and made a part of said petition, and the affidavits of Charles E. Miller, James E. Lantz and L. Dale Pease attached to said petition and made a part thereof, marked Exhibits "A", "B" and "C" respectively, and the affidavits of Charles E. Miller, James E. Lantz, Richard G. Smith and John A. Kohl attached to said petition and made a part thereof, marked Exhibits "D", "E", "F" and "H", respectively, charging contempt of court against Hustler Wilson for violation of the temporary injunction heretofore issued herein:

It Is Ordered that the said Hustler Wilson be, and he is hereby, ordered and directed to appear before this court at Peoria, Illinois on the 25th day of February, A. D. 1942, at 2 o'clock P. M., to show cause, if any he has, why he should not be punished for contempt of court for violation of the temporary injunction heretofore issued herein on January 19, 1942, as more fully appears from the petition of plaintiff and the sworn statements attached thereto, copies of which are hereby ordered to be served upon the said Hustler Wilson.

Dated this 9th day of February, A. D. 1942.

/s/ J. Leroy Adair, District Judge.

Endorsed: Filed Feb. 9, 1942, G. W. Schwaner, Clerk.

Entered Feb. 9, 1942. And afterwards, to-wit: on the 9th day of February, A. D. 1942, a certain Order or Rule to Show Cause was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1435 In the District Court of the United States.

• (Caption—P-149) • •

ORDER OR RULE TO SHOW CAUSE.

On petition of the Toleda, Peoria & Western Railroad, plaintiff in the above entitled cause, and affidavit attached thereto and made a part of said petition, and the sworn statements of Harold B. Crotts, Lawrence H. Howe and Harold E. Kipling attached to said petition and made a part thereof, marked Exhibits "A", "B" and "C", respectively, charging contempt of court against Frank W.

Lucas for violation of the temporary injunction hereto-

fore issued herein:

It Is Ordered that the said Frank W. Lucas be, and he is hereby, ordered and directed to appear before this court at Peoria, Illinois, on the 25th day of February, A. D. 1942, at 2 o'clock P. M., to show cause, if any he has, why he should not be punished for contempt of court for violation of the temporary injunction heretofore issued herein on January 19, 1942, as more fully appears from the petition of plaintiff and the sworn statements attached thereto, copies of which are hereby ordered to be served upon the said Frank W, Lucas.

Dated this 9th day of February, A. D. 1942.

/s/ J. Leroy Adair, District Judge.

Endorsed: Filed Feb. 9, 1942, G. W. Schwaner, Clerk.

1436 And afterwards, to-wit: on the 9th day of February, A. D. 1942, the following further proceedings were 1942. had in said cause and were entered of record, to-wit:

1437 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—P-149)

Monday, February 9, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 9th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. Heyl, its attorneys, and come also the defendants herein by Cassidy, Knoblock & Sloan, (by Louis Knoblock), and now the plaintiff presents its Motion for Default of Defendants for Failure to serve or file Answer to Original Complaint or to Complaint as Amended, and the ruling on said motion is hereby reserved by the Court.

It is further ordered by the court that the hearing as to the violations of the Temporary Injunction be set for Feb-

ruary 25, 1942, at 2 o'clock p. m.

Feb. 10, 1942. 1438 And afterwards, to-wit: on the 10th day of February, A. D. 1942, the following further proceedings were had in said cause and were entered of record, to-wit:

1439 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149)

Tuesday, February 10, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 10th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. H., I, its attorneys, and it is ordered by the Court that rule be and it is hereby entered against all defendants in the Complaint to file an Answer or other Motions on or before

February 16, 1942, at 2 o'clock p. m.

Now comes the plaintiff herein and moves the court that notices go to the defendants H. J. Dilley, Delmar Newdigate, Paul Brokaw, Hustler Wilson and Frank W. Lucas to show cause why they should not be adjudged in contempt of the Temporary Injunction, and the Court having heard said motion and being fully advised in the premises, it is ordered by the court that said motion be and it is hereby allowed. Trial is set on February 25, 1942, at 2 o'clock p. m.

In accordance with the said order, Notices are hereby sent by the Clerk of this Court to H. J. Dilley, Delmar Newdigate, Paul Brokaw, Hustler Wilson and Frank W.

Lucas.

1440 And afterwards, to-wit: on the 16th day of February, A. D. 1942, there was filed in the office of the clerk of said court, a certain Defendants' Answer to Complainant's Amended Complaint, which said Answer was and is in the words and figures following, to-wit:

1441 IN THE DISTRICT COURT OF THE UNITED STATES. * (Caption—P-149) * *

Filed Feb. 16 1942.

ANSWER TO COMPLAINANT'S AMENDED COMPLAINT.

Now come the above defendants by Cassidy, Knoblock & Sloan and George Donaldson, their attorneys, and for

answer to said complaint state as follows:

(A) That said complaint is insufficient in law and does not state a claim upon which the relief prayed for may be granted for the reason that said complaint does not allege facts showing any jurisdiction of the District Court of the United States over said cause and subject matter therein for the reason that said complaint neither alleges facts.

showing the diversity of citizenship between the 1442 plaintiff and the defendants nor facts showing that

the suit arises under the Constitution or laws of the United States or treaties made, nor are there any other circumstances alleged which give the District Court of the

United States jurisdiction of the said cause.

Defendants further answer that said complaint alleges facts showing the said cause rose out of a labor dispute, but complainant's allegations and facts do not show that unlawful acts have been threatened and will be committed or have been committed and will be continued unless restrained, nor are facts alleged showing that substantial and irreparable damage to complainant's property will follow, nor are facts alleged showing that as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon the defendants by the granting of the relief, nor does said complaint allege facts showing that the complainant has no adequate remedy at law, nor are facts alleged showing that the public officials charged with the duty to protect complainant's property are unwilling or unable to furnish that protection, nor are sufficient facts alleged showing that complainant has complied with all of the obligations imposed by law upon it, nor does such complaint allege or show that every reasonable effort to settle said dispute either by negotiation of with the aid of any available governmental machinery of mediation or voluntary arbitration has been made.

(1) All of the above defendants admit that the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal office in the City of Peoria, Illinois, and that for years past it has been and now is the owner of and is

engaged in operating a railroad between Effner; Indi-1443 ana, and Keekuk, Iowa, through the State of Illinois,

with a branch line extending from LaHarpe in Hancock County, Illinois, to Lomax in Henderson County, Illinois, where it connects with The Atchison, Topeka and Santa Fe Railway Company, and also a line of road extending from Hamilton, Illinois, to Warsaw, Illinois; that it has been and now is a common carrier of freight by railroad within the State of Illinois, and into the states of Iowa and Indiana; but these defendants neither admit nor deny that said carriage of freight is done in connection with other roads as these defendants are not possessed with information upon which to form a belief and therefore demand strict proof of the same; however, all of the aforesaid defendants admit that said plaintiff is engaged in the business of transporting freight between points within the State of Illinois and between the State of Illinois and other states, and further admit that it has for many years last past and is now engaged in bandling both intra- and interstate traffic. It is further admitted that said plaintiff is engaged in the handling of both inter- and intra-state traffic as a common carrier, and as to each and every one of the remaining ailegations contained in paragraph one of plaintiff's complaint, same are hereby expressly denied by all of the defendants herein.

(2) All of the defendants herein further admit that the plaintiff has its principal office in the City of Peoria in the State of Illinois and that its line of railroad extends eastward from Peoria through the Counties of Tazewell, Woodford, MacLean, Livingston, Ford and Iroquois to Effner, Indiana, and extends westward from Peoria through the counties of Peoria, Fulton, McDonough, Hancock and Henderson; and that it is and was at the times hereinafter mentioned and is now a common carrier of freight by railroad, and as to each and all of the other allegations contained in paragraph two of plaintiff's com-

1444 the truth and accuracy of same,

(3) All of the defendants herein admit that the

plaint, all of the defendants herein expressly deny

plaintiff is a common carrier subject to the Railway Labor Act of the United States as amended, but as to each and all of the remaining allegations contained in paragraph three of plaintiff's complaint all of the said defendants herein expressly deny the truth and the accuracy of same.

All of the defendants herein admit that the plaintiff has established and now maintains and operates a railroad extending from Effner, Indiana through the State of Illinois with various branches or spur lines connecting with other railroads, and also established and now maintains and operates station facilities at various cities and villages located upon its line of road; and that it has also extablished and now maintains and operates large terminal facilities in the City of East Peoria, Illinois and adjacent territory, including terminal facilities, round house, machine shops, yards, turntable, repair shops, blacksmith shops, and all other terminal facilities required for its use in handling its business as a common carrier, but as to each and all of the other allegations contained in paragraph four of plaintiff's complaint, all of the defendants herein expressly deny the truth and the accuracy of same.

(5) The Brotherhood of Railroad Trainmen, referred to by plaintiff as the BRT admits that it is a voluntary labor organization and F. W. Coyle is its vice president, and the defendant, Brotherhood of Locomotive Firemen and Enginemen, referred to by the plaintiff as the B. of L. F. & E., admits that it is a voluntary labor organization and that W. C. Keiser is its vice president, and it is admitted by Enterprise Lodge #27 of the Brotherhood of Railroad Trainmen that it is the Peoria representative of said Brotherhood, and it is admitted by the Robert Mason Lodge #926 of the Brotherhood of Locomotive

Firemen and Enginemen that it is the Peoria rep-1445 resentative of said Brotherhood, and it is admitted

by all of the remaining defendants that they are now on a strike, but each and all of the above stated defendants deny that they should be made parties defendant to this said cause.

(6) All of the defendants herein neither admit nor deny the truth and the accuracy of the allegations contained in paragraph six of the plaintiff's complaint for the reason that they do not have knowledge or information sufficient to form a belief upon the truth of said allegations and demand strict proof of the same.

(7) All of the defendants herein admit the truth and

the accuracy of the allegations contained in paragraph seven of plaintiff's complaint.

(8) All of the defendants herein admit the truth and the accuracy of the allegations contained in paragraph

eight of plaintiff's complaint.

(9) The defendants Brotherhood of Railroad Trainmen and Brotherhood of Railroad Trainmen Enterprise Lodge #27, being the representative of said Brotherhood, admit the truth and accuracy of the allegations contained in paragraph nine of plaintiff's complaint but all of the other defendants herein neither admit nor deny the truth and the accuracy of said allegations contained in paragraph nine of plaintiff's complaint for the reason that they are not possessed of sufficient knowledge upon which to form a belief as to the truth and accuracy of same and therefore demand struct proof of same.

(10) The defendants Brotherhood of Railroad Trainmen and Brotherhood of Railroad Trainmen Enterprise Lodge #27, being the local representative of said Brotherhood, admit the truth and accuracy of the allegations contained in paragraph ten of plaintiff's complaint, but all

of the remaining defendants herein neither admit 1446 nor deny the truth and accuracy of the same for the

reason that they are not possessed with sufficient knowledge or information upon which to form a belief as to the truth and accuracy of said allegations and therefore said remaining defendants demand strict proof of the same.

(11) The Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Locomotive Firemen and Enginemen Robert AMason Lodge #926 admit the truth and the accuracy of the allegations contained in paragraph 11 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth or the accuracy of said allegations contained in plaintiff's complaint for the reason that they are not possessed with sufficient knowledge upon which to form an opinion or belief and therefore demand strict proof of the same.

(12) The Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Locomotive Firemen and Enginemen Robert Mason Lodge #926 admit the truth and the accuracy of the allegations contained in paragraph 12 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth and accuracy of said allegations contained in paragraph 12 of

plaintiff's complaint for the reason that they are not possessed with sufficient knowledge to form an opinion or belief as to the truth and accuracy of said allegations, therefore all of the said remaining defendants demand

strict proof of same.

(13) The truth and the accuracy of the allegations contained in paragraph 13 of plaintiff's complaint are admitted by the said defendants, Frank W. Coyle, vice president of the Brotherhood of Railroad Trainmen and W. C. Keiser, vice president of the Brotherhood of Locomotive Firemen and Enginemen, and successor to C. H. Kennan, former vice president of the Brotherhood of Locomotive

Firemen and Enginemen, however said defendants, 1447 F. W. Coyle and W. C. Keiser wish to further state that under the provisions of the Railway Labor Act which said provisions were applicable to the dispute then and there existing between the said plaintiff and said Brotherhoods who were the duly and legally elected bargaining agents for the said employees of the plaintiff as aforesaid, that it became necessary that they invoke the services of the National Mediation Board or that the proposed change in rate schedules, rules and working conditions as proposed by the plaintiff would have gone into full force and effect, and that said defendants had no alternative to pursue other than to invoke the services of the Mediation Board or submit to the intolerable proposals of the plaintiff as a foresaid. All of the remaining defendants herein, except the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, neither acmit nor deny the truth and the accuracy of the allegations contained in paragraph 13 of plaintiff's complaint for the reason that they are not possessed with sufficient knowledge to form a belief as to the truth and accuracy of same, therefore they demand strict proof of same.

(14) The Brotherhood of Railroad Trainmen and F. W. Coyle, vice president of the Brotherhood of Railroad Trainmen, and the Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and accuracy of the statements contained in paragraph 14 of plaintiff's complaint, but all of the remaining defendants neither admit nor deny the truth and the accuracy of the statements contained in said paragraph for the reason that they are not possessed with sufficient knowl-

edge or information to form a belief thereof, and therefore demand strict proof of the same.

(15) Defendants Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of

Locomotive Firemen and Enginemen and W. C. 1448 Keiser, its vice president, admit the truth and the accuracy of the statements contained in paragraph 15 of plaintiff's complaint, however the remaining of said defendants neither admit nor deny the truth and the

accuracy of such allegations for the reason that they do not have sufficient information to form a belief and de-

mand strict proof thereof.

(16) The defendants, Brotherhood of Railroad Trainmen and F. C. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and accuracy of statements contained in paragraph 16 of plaintiff's complaint, but all of the remaining defendants herein neither admit nor deny the truth and the accuracy of the same for the reason that they do not possess sufficient knowledge upon which to form a belief and therefore demand strict proof of same.

(17) The defendants deny the allegations contained in

paragraph 17 of plaintiff's complaint.

(18) The defendants deny the statements contained in paragraph 18 of plaintiff's complaint.

(19) Defendants deny the statements contained in par-

agraph 19 of plaintiff's complaint.

(20) Defendants deny the allegations contained in paragraph 20 of plaintiff's complaint.

(21) Defendants deny the allegations contained in par-

agraph 21 of plaintiff's complaint.

(22) Defendants deny the allegations contained in par-

agraph 22 of plaintiff's complaint.

(221) Defendants, Brotherhood of Railroad Trainmen and F. W. Covle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and C. W. Keiser, its vice president, admit that the plaintiff requested the National Mediation Board to recommend the President of the United States to appoint an emergency board and fact-

finding body to act in the dispute existing between 1449 the plaintiff and the defendant, but all of the defend-

ants deny that same was made in good faith and in fact state that same was made in bad faith by said plaintiff, and it is evident by a letter written by the president, George P. McNear, Jr., of the plaintiff corporation, in which it was admitted and stated by the said George P. McNear, Jr., president of the Plaintiff, that they would not be bound by the recommendations and findings of the said emergency board, and that such request on the part of the plaintiff was merely for the purpose of further delay, procrastination, avoidance and evasions of the issues in-

volved in the said dispute.

(23) Defendants Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, admit the truth and the accuracy of the allegations contained in paragraph 23 of plaintiff's complaint, but the remainder of the defendants neither admit nor deny the truth and accuracy of the allegations for the reason that they do not possess sufficient knowledge upon which to form a belief and therefore demand strict proof of same.

'(24) Defendants deny the allegations contained in par-

agraph 24 of plaintiff's complaint.

(25) Defendants deny the allegations contained in paragraph 25 of plaintiff's complaint.

(26) Defendants deny the allegations contained in para-

graph 26 of plaintiff's complaint.

(27) Defendants deny the allegations contained in paragraph 27 of plaintiff's complaint.

(28) Defendants deny the allegations contained in para-

graph 28 of plaintiff's complaint.

(29) Defendants deny the allegations contained in paragraph 29 of plaintiff's complaint.

(30) Defendants deny the allegations contained in

1450 paragraph 30 of plaintiff's complaint.

(31). Defendants dany the allegations contained in paragraph 31 of plaintiff's complaint.

(32) Defendante deny the allegations contained in para-

graph 32 of plaintiff's complaint.

(33) Defendants deny the allegations contained in paragraph 33 of plaintiff's complaint.

(34) Defendants deny the allegations contained in para-

graph 34 of plaintiff's complaint.

(35) Defendants deny the allegations contained in paragraph 35 of plaintiff's complaint.

(36) Defendants deny the allegations contained in paragraph 36 of plaintiff's complaint.

(37) Defendants deny the allegations contained in paragraph 37 of plaintiff's complaint.

(38) Defendants deny the allegations contained in para-

graph 38 of plaintiff's complaint.

(39) Defendants deny the allegations contained in paragraph 39 of plaintiff's complaint.

(39½) Defendants deny the allegations contained in par-

agraph 391 of plaintiff's complaint.

(40) Defendants deny the allegations contained in paragraph 40 of plaintiff's complaint.

(41) Defendants deny the allegations contained in para-

graph 41 of plaintiff's complaint.

(42) Defendants deny the allegations contained in paragraph 42 of plaintiff's complaint.

(43) Defendants deny the allegations contained in para-

graph 43 of plaintiff's complaint.

(44) Defendants deny the allegations contained in paragraph 44 of plaintiff's complaint.

(45). Defendants deny the allegations contained in

1451 paragraph 45 of plaintiff's complaint.

(46) Defendants deny the allegations contained in paragraph 46 of plaintiff's complaint.

7) Defendants deny the allegations contained in para-

graph 47 of plaintiff's complaint.

(48) Defendants deny the allegations contained in para-

graph 48 of plaintiff's complaint.

(49) Defendants Brotherhood of Railroad Trainmen and F. W. Coyle, its vice president, and Brotherhood of Locomotive Firemen and Enginemen and W. C. Keiser, its vice president, and J. L. Fueger, H. E. Cole, O. W. Kirk, C. H. Kirk, Clinton Stetler, and K. A. Feldt, originally defendants herein, have caused their answer to plaintiff's complaint to be filed even though they have been dismissed by order of the Court because of a certain stipulation entered into in said cause by their attorneys wherein it was agreed that answers would be filed in behalf of each of all of the defendants named in plaintiff's original complaint. The defendants Brotherhood of Railroad Trainmen Enterprise Lodge #27 and Brotherhood of Locomotive Firemen and Enginemen Robert Mason Lodge #926 have also caused their answers to be filed in this said cause for the reason that said defendants were named as additional party defendants by the plaintiff herein prior to the order of the court.

Wherefore all of the said Defendants of this said cause

respectfully pray this Honorable Court to dismiss plaintiff's complaint and all amendments thereto and that all of said defendants may be allowed to go bence without day, and that all costs be assessed against the plaintiff.

/s/ Cassidy, Knoblock & Sloan,

/s/ George Donaldson.

Endorsed: Filed Feb. 16, 1942, G. W. Schwaner, Clerk.

1452 And afterwards, to-wit: on the 17th day of February, A. D. 1942, the following further proceedings 1942. were had in said cause in said court and were entered of record, to-wit:

1453 IN THE DISTRICT COURT OF THE UNITED STATES.

• (Caption—P-149)

Tuesday, February 17, 1942.

Court met pursuant to adjournment. .

Present, the Honorable J. Leroy Adair, Judge.

Come now the defendants in open court and file their Notice of Appeal, and deposit with the Clerk of this Court, the sum of \$250.00 cash bond on appeal for costs and \$2.50 as the Clerk's registry fee for custody of cash bond.

1454 And afterwards, to-wit: on the 17th day of February, A. D. 1942, there was filed in the office of the clerk of said court in said cause, a certain Notice of Appeal by the Defendants, which said Notice of Appeal was and is in the words and figures following, to-wit:

Filed 1455 Appeal from the District Court of the United

STATES FOR THE SOUTHERN DISTRICT OF

ILLINOIS, NORTHERN DIVISION TO THE

CIRCUIT COURT OF APPEALS FOR

THE SEVENTH CIRCUIT.

Toledo, Peoria & Western Railroad, Plaintiff-Appellee,

228. The Brotherhood of Railroad Trainmen, Enterprise Lodge #27, and Brotherhood of Locomotive Firemen and Enginemen. Robert Mason Lodge #926, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Reiman, G. L. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. Brown, H. J. Dilley, Frank Leo Totten, Lucas. Newdigate and Arthur Brewster. Defendants-Appellants.

No. P-149.

NOTICE OF APPEAL.

Notice is hereby given that the Brotherhood of Railroad Trainman, Enterprise Lodge #27, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Reiman, G. L. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C.

L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, defendants above named, hereby appeal to the Circuit Court of Appeals for the 7th Circuit from the order of the District Court entered in this cause on January 3rd, 1942 allowing a temporary restraining order, and also from the order of the District Court entered January 15, 1942 denying the motion of defendants at the close of plaintiff's evidence introduced on the hear-

ing for temporary injunction, to vacate the order en-1456 tered on January 8th, 1942 extending the temporary

restraining order to January 17th, 1942, to dismiss the complaint and to deny the application of plaintiff for a temporary injunction; and also from the order of the Distric Court entered on January 19, 1942 at the close of all the evidence introduced on the hearing for temporary injunction, denying the motion of defendants to vacate the order entered on January 8th, 1942, extending the temporary restraining order to January 17th, 1942 and the order entered on January 16th, 1942 extending the temporary restraining order to January 19th, 1942 and to dismiss the complaint and to deny the application of plaintiff for a temporary injunction; and also from the order of the Distriet Court entered January 19th, 1942 allowing a temporary injunction in favor of plaintiff and against these defendants restraining them from certain acts set forth in said order.

/s/ George Donaldson, /s/ Cassidy, Knoblock & Sloan,

Attorneys for Defendants.

Endorsed: Filed Feb. 17, 1942, G. W. Schwaner, Clerk.

1457 And afterwards, to-wit: on the 24th day of February, A. D. 1942, the following further proceedings were had in said cause and were entered of record, to-wit:

Tuesday, February 24, 1942.

Court met pursuant to adjournment.

Present, the Honorable J. Leroy Adair, Judge.

And now on this 24th day of February, A. D. 1942, comes the plaintiff herein by John M. Elliott and Clarence W. Heyl, its attorneys, and now comes A. M. Fitzgerald and enters his appearance as attorney for the defendants H. J. Dilley and Paul Brokaw; comes Charles M. Hay and enters his appearance for Hustler Wilson; and come Miller & Hornbeck and enter their appearances as attorneys for Delmar Newdigate and Frank W. Lucas. Now this cause comes on for hearing on the defendants' motions for continuance of the hearing on violations of the Temporary Injunction set for February 25, 1942, and the court having heard said motions and being fully advised in the premises, it is ordered by the court that said motions be and they are hereby allowed, and this cause is hereby continued.

It is further ordered by the court that this case be set for hearing on Monday, March 9, 1942, at 2 o'clock p. m.

And afterwards, to-wit: on the 21st day of April,
A. D. 1942, there was filed in the office of the clerk of
said court certain Points Relied on by Defendants for Reversal on Appeal, which said Points were and are in the
words and figures following, to-wit:

1460 DISTRICT COURT OF THE UNITED STATES.

* (Caption—P-149) * *

POINTS RELIED ON BY DEFENDANTS FOR REVERSAL ON APPEAL.

Now come defendants-appellants and make the following statement of Points relied on by defendants for reversal on appeal:

(1) The District Court erred in granting the temporary restraining order because there was no allegation in the

complaint of ultimate and competent facts showing that the District Court had jurisdiction of the subject matter of the cause since there were no allegations of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A. or otherwise.

(2) The District Court erred in granting a temporary restraining order to plaintiff because the complaint alleged facts showing it involved or grew out of a labor dispute and there was no allegation or proof of facts showing that plaintiff had not failed to comply with any obligation imposed by law which was involved in the labor dispute in question or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotia-

tion or with the aid of any available governmental 1461 machinery of mediation or voluntary arbitration.

(3) The District Court erred in granting a temporary restraining order because there was not made and filed prior to its issuance a proper finding of facts.

(4) The District Court erred in granting the temporary restraining order because the order granted more extensive relief than the specific act or acts expressly complained of

in the complaint.

(5) The District Court erred in granting a temporary restraining order without notice because there was no sufficient testimony under oath or showing of such circumstances as required dispensing with notice or such as to justify the Court in issuing a temporary injunction upon a hearing after notice.

(6) The District Court erred in entering an order January 8th, 1942 extending and continuing in force until January 17th, 1942 the temporary restraining order entered January 3rd, 1942 because Title 29, U.S. C. A. § 107 limits the duration and effectiveness of such order to five days and the Court is without power to grant a longer order.

(7) The District Court erred in entering an order January 15th, 1942 extending and continuing in force until January 19th, 1942 the temporary restraining order entered January 3rd, 1942 and extended by order of January 8th, 1942 to January 15th, 1942 because Title 29, U. S. C. A. \$107 limits the duration and effectiveness of such order to

five days and the Court is without power to grant a longer

order.

The District Court erred in denying the motions of defendants to dismiss plaintiff's complaint because the complaint although showing that it involved or grew out of a

labor dispute did not allege facts showing:

That unlawful acts have been threatened and will be committed unless restrained or have been. committed and will be continued unless restrained:

That substantial and irreparable injury to com-

plainant's property will follow;

That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief:

That complainant has no adequate remedy at law: (d)

That the public officers charged with the duty to protect complainant's property are unable or unwilling to

furnish adequate protection;

That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental

machinery of mediation or voluntary arbitration.

The District Court erred in denying the motions of defendants to dismiss the complaint because there was no allegation in the complaint of ultimate and competent facts showing that the District Court had jurisdiction of the subject matter of the cause since there were no allegations of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A. or otherwise.

The District Court erred in denying the motions of defendants made at the close of plaintiff's evidence and again at the close of all of the evidence on the hearing for a temporary injunction to vacate the order entered January 8th, 1942 extending the temporary restraining order to January 17th, 1942 because Title 29, U. S. C. A. § 107 limits the duration and effectiveness of such order to five days and the Court was without power to grant a longer

order.

The District Court erred in denying the 1463 (11) motions of defendants made at the close of plaintiff's evidence and again at the close of all of the evidence on the hearing for a temporary injunction to deny the application of plaintiff for a temporary injunction, because the complaint did not allege ultimate facts and the evidence did not show facts proving that the District Court had jurisdiction of the subject matter of the cause since there were no allegations in the complaint or evidence on the hearing of ultimate and competent facts showing that there was any diversity of citizenship between plaintiffs and defendants or that the cause arose under the Constitution or laws of the United States or treaties made or that there existed any other jurisdictional grounds provided by Title 28, Section 41, U. S. C. A., or otherwise.

(12) The District Court erred in denying the motions of defendants made at the close of plaintiff's evidence and again at the close of all the evidence to deny the application of plaintiff for a temporary injunction because there

was no evidence tending to prove;

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained;

(b) That substantial and irreparable injury to com-

plainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling

to furnish adequate protection;

(f) That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

1464 (13) The District Court erred in entering the order allowing a temporary injunction in favor of plaintiff and against defendants because the District Court had no jurisdiction of the subject matter of the cause since there was no diversity of citizenship between plaintiff and defendants nor did the cause arise under the Constitution

or laws of the United States or treaties made nor did there exist any other jurisdictional grounds provided by Title

28, Section 41, U. S. C. A., or otherwise,

(14) The District Court erred in entering the order allowing a temporary injunction in favor of plaintiff and against defendants because it was against the manifest weight of the evidence for it to find;

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed

and will be continued unless restrained;

(b) That substantial and irreparable injury to com-

plainant's property will follow:

- (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
 - (d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling

to furnish adequate protection;

(f) That plaintiff had not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or that plaintiff had not failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

George Donaldson, Cassidy, Knoblock & Sloan, Attorneys for Defendants-appellants.

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

1465 And afterwards, to-wit: on the 18th day of February, A. D. 1942, the return of the Clerk of this Court showing the mailing of a copy of the Notice of Appeal to all Attorneys of Record was entered on the Docket in said cause, which said Return was and is in the words and figures following, to-wit:

1466 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

Civil Docket No. 1-Page 243.

Feb. 18, 1942—Copies of Notice of Appeal mailed to John M. Elliott, Alliance Life Bldg., Peoria, Ill.; Clarence W. Heyl, Central National Bank Bldg., Peoria, Ill.; George Donaldson, 113 E. Washington St., East Peoria, Ill.; and Cassidy, Knoblock & Sloan, Jefferson Bldg., Peoria, Ill.

And afterwards, to-wit: on the 25th day of March, A.D. 1942, a certain Motion and Order for Extension of Time to file Record in Circuit Court of Appeals was filed in the office of the clerk of said court and said Order was entered of record, which said Motion and Order were and are in the words and figures following, to-wit:

1468 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149)

MOTION.

Now come the defendants appellants by their attorneys and moves this Honorable District Court of the United States to enter an order by authority of sub-paragraph (g) of Rule 73 of Rules of Civil Procedure for the District Courts of the United States, extending the time for filing the record on appeal in this cause and docketing the action, up to and including May 16th, 1942.

In support of this motion is is represented that on February 17th, 1942 these defendants-appellants filed a notice of appeal from the order of this court granting a temporary injunction and other orders in this cause and that the order granting the temporary injunction against these defendants-appellants was entered on January 19th, 1942.

It is also represented that following the filing of said notice of appeal counsel for these defendants appellants requested the official reporter of this court, one Mary Reynolds, to prepare the transcript of the evidence heard during the trial which trial extended for more than a

week. It is represented that said official reporter has proceeded with such preparation of the transcript and has now completed more than 1000 pages but that said reporter has advised that a great deal of said evidence is

still to be transcribed and cannot be done within the 1469 time for filing the record, i.e., March 27th, 1942 because said official reporter is engaged in the record-

ing of testimony and evidence in a trial now proceeding

in the District Court of the United States.

It is represented that since such transcript is an essential part of the transcript of evidence to be filed under Rule 75 of Rules of Civil Procedure it is not possible to file such record within the time required and that the extension for filing such record as prayed is necessary to perfect

said appeal.

Brotherhood of Railroad Trainmen, Enterprise Lodge #27, Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge #926, W. Y. Christoff, J. J. Gimming, Garland F. Brown, Wl. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, Herman Rieman, G. L. Underwood, A. R. Overacker, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, Frank W. Lucas, Leo Totten, Delmar Newdigate, and Arthur Brewster,

By /s/ Cassidy, Knoblock & Sloan, Their attorneys.

Endorsed: Filed Mar. 25, 1942, G. W. Schwaner, Clerk.

Entered Mar. 25, 1942. IN THE DISTRICT COURT OF THE UNITED STATES. (Caption—P-149)

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ORDER.

This cause having been presented to the Court upon motion of defendants appellants for an order to extend the time in which to file the record on appeal and docket the action and the court having found that good cause has been shown for such extension orders under the authority

of sub-paragraph (g) of Rule 73 of the Rules of Civil Procedure that the time of filing the record on appeal and docketing the action by said defendants-appellants shall and is hereby extended to and including May 16th, 1942.

/s/ J. Leroy Adair.

Endorsed: Filed Mar. 25, 1942, G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 5th day of March, Filed A. D. 1942, there was filed in the office of the clerk of 1942. said court, a certain Request for Portions of Record for Preliminary hearing in Circuit Court of Appeals, which said Request was and is in the words and figures following, to-wit:

1472 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149) *

REQUEST FOR PORTIONS OF RECORD FOR PRE-LIMINARY HEARING IN CIRCUIT COURT OF APPEALS.

The Clerk of the Court is here requested to certify the following portions of the record in this cause under Rule 75 (j) of the Rules of Civil Procedure for Preliminary Hearing in the Circuit Court of Appeals.

Appropriate placitas. $\cdot(1)$

(2) Complaint and amendment to complaint.

Answer to complaint. (3)

Motions of defendants-appellants made at the close of plaintiff's evidence on the hearing for a temporary injunction and at the close of all the evidence on such hearing.

(5) Order of Court denving such motions.

(6)Order of Court allowing temporary injunction.

Orders of Court that individuals therein named show cause why they should not be held in contempt.

Order of Court extending hearing on such rule to March 9th, 1942.

Notice of appeal and cost bond and return of Clerk showing mailing.

(10) Request for portions of record for preliminary hearing, in the Circuit Court of Appeals.

George Donaldson, Cassidy, Knoblock & Sloan, Attorneys for Defendants.

Endorsed: Filed March 5, 1942, G. W. Schwaner, Clerk.

Filed Apr. 21, 1942.

1473 And afterwards, to-wit: on the 21st day of April,
A. D. 1942, there was filed in the office of the clerk
of said court a certain Designation of Contents of Record
on Appeal, which said Designation was and is in the words
and figures following, to-wit:

1474 IN THE DISTRICT COURT OF THE UNITED STATES.

• (Caption—P-149)

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Now comes the defendants-appellants herein and designate the following as the contents of the record on appeal:

1. All appropriate placitas.

2. Complaint filed January 3rd, 1942.

3. Bond filed January 3rd, 1942.

4. Finding of facts on application for temoprary restraining order filed January 3rd, 1942.

5. Temporary restraining order entered January 3rd,

1942.

6. Order entered January 8th, 1942 extending and continuing in force temporary restraining order until January 17th, 1942.

7. Amendment to complaint filed January 15th, 1942.

8. Motion of defendants filed January 15th, 1942 at close of plaintiff's evidence on hearing for temporary injunction to vacate order of court entered January 8th, 1942 extending temporary restraining order to January 17th, 1942, to dismiss complaint herein filed and to deny application of plaintiff for a temporary injunction. Order of court denying said motion entered January 15th, 1942.

9. Order entered January 16th, 1942 extending and continuing in force the temporary restraining order until

January 19th, 1942.

at the close of all the evidence on the hearing for temporary injunction to vacate order entered on January 8th, 1942 extending the temporary restraining order to January 17th, 1942 and the order entered January 16th, 1942, extending the temporary restraining order to January 19th, 1942, to dismiss the complaint herein filed and to deny application of plaintiff for a temporary injunction. Order of court denying said motion entered January 19th, 1942.

11. Bond filed January 19th, 1942.

12. Order permitting Amendment to Complaint on face thereof made January 19th, 1942, as shown in item 10.

13. Findings of fact and conclusions of law made and

filed January 19th, 1942.

14. Order for temporary injunction entered January

19th, 1942.

- 15. Order of Court that rule is made on defendants to file answer or other motions on or before February 16th, 1942 at 2 P. M.
- 16. Answer of defendants to complaint filed February 16th, 1942.
 - 17. Notice of appeal filed on February 17th, 1942.

18. Cost bond filed February 17th, 1942.

19. Return of Clerk showing mailing of notice of appeal on February 18th, 1942.

20. Order of Court entered March 25th, 1942 extending

time for filing record on appeal.

21. Reporter's transcript of the evidence taken on the hearing for the temporary injunction.

22. Points relied on by defendants for reversal on

appeal.

23. Designation of contents of record on appeal.

24. Certificate of Clerk as to authenticity of the record George Donaldson,
Cassidy, Knoblock & Sloan,
Attorneys for Defendantsappellants.

Endorsed: Filed April 21, 1942, G. W. Schwaner, Clerk.

Filed Apr. 27, 1942.

And afterwards, to-wit: on the 27th day of April A. D. 1942, there was filed in the office of the clerk of said court, a certain Petition for an Order Directing the Clerk of the District Court to send Plaintiff's Original Exhibits to Clerk of Circuit Court of Appeals, which said Petition was and is in the words and figures following, to-wit:

1477 In the District Court of the United States.

* (Caption—P-149) . * *

PETITION FOR AN ORDER DIRECTING THE CLERK OF THE DISTRICT COURT TO SEND PLAINTIFF'S ORIGINAL EXHIBITS IN THIS CASE TO CLERK OF CIRCUIT COURT OF APPEALS.

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and shows to the court that plaintiff's original exhibits numbers 1 to 31, both inclusive, constitute material, competent, and revelant evidence in this cause, and that said original exhibits should be forwarded by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals, in lieu of copies thereof, for inspection by said Circuit Court of Appeals; that said original exhibits should be forwarded to the Clerk of the Circuit Court of Appeals with the record in this cause.

Wherefore, plaintiff-appeilee prays that an order may be entered herein directing the Clerk of the District Court to forward plaintiff's original exhibits numbers 1 to 31, both inclusive, to the Clerk of the Circuit Court of Appeals with the record herein for inspection by said Circuit Court

of Appeals in lieu of copies thereof.

John M. Elliott, Clarence W. Heyl, Attorneys for Plaintiff-Appeller.

Endorsed: Filed April 27, 1942, G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 27th day of April, Entered A. D. 1942, a certain Order Directing that Plaintiff's . 1942. Original Exhibits be Forwarded to the Clerk of the Circuit Court of Appeals in Lieu of Copies was filed in the office of the clerk of said court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

1479 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption-P-149)

ORDER DIRECTING THAT PLAINTIFF'S ORIGINAL EXHIBITS BE FORWARDED TO THE CLERK OF THE CIRCUIT COURT OF APPEALS IN LIEU OF COPIES.

This cause now coming on to be heard upon the petition of plaintiff-appellee that the plaintiff's original exhibits numbers 1 to 31, both inclusive, in lieu of copies thereof, be forwarded by the Clerk of the District Court of the Clerk of the Circuit Court of Appeals for inspection by

said Circuit Court of Appeals.

Upon Consideration Thereof, It Is Ordered that the Clerk of the District Court forward plaintiff's original exhibits numbers 1 to 31, both inclusive, in lieu of copies thereof, to the Clerk of the Circuit Court of Appeals for inspection by the Circuit Court of Appeals; that said original exhibits shall be forwarded with the record in this case and that the cost of transportation thereof shall be charged as costs in this case; that upon the final determination of this cause in the Circuit Court of Appeals that original exhibits be returned to the Clerk of this Court.

J. Leroy Adair, Judge /s/

Endorsed: Filed April 27, 1942, G. W. Schwaner, Clerk.

1480 And afterwards, to-wit: on the 30th day of April, A. D. 1942, there was filed in the office of the clerk of said Court, a certain Designation of Additional Portions of Record on Appeal, which said Designation of Additional Portions was and is in the words and figures, following, to-wit:

Filed 1481 Apr. 30, 1942

DISTRICT COURT OF THE UNITED STATES. • (Caption—P-149)

DESIGNATION OF ADDITIONAL PORTIONS OF RECORD ON APPEAL.

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and designates the following additional

portions of contents of the record on appeal:

(1) Order entered January 5, 1942 directing service of notice on public officials of application for temporary injunction, together with the certificate of the Clerk of the District Court showing mailing of printed certified copy of Temporary Restraining Order to each of the public officials named in said Order on January 5, 1942.

(2) Order of Court entered February 9, 1942 directing United States Marshal to enforce the provisions of the

temporary injunction granted January 19, 1942.

(3) Petition and order of court directing that plaintiff-appellee's original Exhibits numbers 1 to 31, both inclusive, be forwarded to the Clerk of the Circuit Court of Appeals for inspection in lieu of copies.

The clerk will please include the above mentioned order entered January 5, 1942 together with certificate showing

service of certified printed copy of Temporary Re-1482 straining Order on public officials named in Order of

January 5, 1942; also, order of February 9, 1942 directing United States Marshal to enforce the provisions of the temporary injunction granted January 19, 1942; also, petition and order directing the Clerk to forward original exhibits Numbers 1 to 31, both inclusive, of plaintiff-appellee to the Clerk of the Circuit Court of Appeals: /s/ John M. Elliott,

/s/ Clarence W. Heyl, Attorneys for Plaintiff-Appellee.

Endorsed: Filed Apr. 30, 1942. G. W. Schwaner, Clerk.

And afterwards, to-wit: on the 2nd day of May,
A. D. 1942, there was filed in the office of the clerk
of said court, a certain Notice of Plaintiff-Appellee's Attorneys, which said Notice was and is in the words and
figures following, to-wit:

1484 IN THE DISTRICT COURT OF THE UNITED STATES. * (Caption—P-149) * *

Filed May 2, 1942.

NOTICE OF PLAINTIFF-APPELLEE'S ATTORNEYS.

Now comes Toledo, Peoria & Western Railroad, Plaintiff-Appellee, and shows that its attorneys of record are John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois, and Clarence W. Heyl, 807 Central National Bank Building, Peoria, Illinois.

Toledo, Peoria & Western Railroad,

Plaintiff-Appellee,

By /s/ John M. Elliott,

/s/ Clarence W. Heyl,

Attorneys for Plaintiff-Appellee.

John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois, and C. W. Heyl,

807 Central National Bank Building, Peoria, Illinois, Attorneys for Plaintiff-Appellee.

Endorsed: Filed May 2, 1942. G. W. Schwaner, Clerk.

1485 United States of America, Southern District of Illinois, Northern Division.

I, G. W. Schwaner, Clerk of the I nited States District Court in and for the Southern District of Illinois, do hereby certify the foregoing to be a true and complete transcript of the Proceedings had of record and on file in the cause of the Toledo, Peoria & Western Railroad vs. The Brotherhood of Railroad Trainmen, et al., Civil Action, No. P-149, (made in accordance with the Request for Portions of Record for Preliminary Hearing in Circuit Court of Appeals, under Rule 75(j) of the Rules of Civil Procedure), as fully as the same appear from the original files and records thereof now in my office remaining.

In Testimony Whereof, I have hereunto subscribed my

name and affixed the seal of the aforesaid Court at Peoria, this 5th day of March, A. D. 1942.

(Seal)

G. W. Schwaner, Clerk, U. S. District Court.

1486 United States of America, Southern District of Illinois, Northern Division.

I, G. W. Schwaner, Clerk of the United States District Court in and for the Southern District of Illinois, do hereby certify the foregoing to be a true and complete transcript of the proceedings had of record and on file in the matter entitled Toledo, Peoria & Western Railroad vs. The Brotherhood of Railroad Trainmen Enterprise Lodge No. 27, et al., Civil Action, No. P-149, (made in accordance with the Designations of Contents of Record on Appeal filed therein) as fully as the same appear from the original files and records thereof now in my office remaining.

In Testimony Whereof I have hereunto subscribed my name and affixed the seal of the aforesaid court at Peoria.

this 14 day of May, A. D. 1942.

G. W. Schwaner, Clerk.

(Seal)

UNITED STATES CICEUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the printed record, which together with Volume I constitutes the printed record, filed in this Court on the third day of July, 1942, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad, Plaintiff-Appeller.

US.

The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.,

Defendants-Appellants.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

(Seal) Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the seventh day of October in the year of our Lord one thousand nine hundred and forty-one, and of our Independence the one hundred and sixty-sixth.

Toledo, Peoria & Western Railroad, Plaintiff-Appellee,

7951 vs.
The Brotherhood of Railroad
Trainmen, Enterprise Lodge No.
27. et al..

Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

And, to-wit: On the sixteenth day of December, 1942, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 7951.

October Term and Session, 1942.

TOLEDO, PEORIA & WESTERN RAILROAD.

Plaintiff-Appellee,

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27. et al.,

Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

December 16, 1942.

Before Sparks, Minton, Circuit Judges, and Lindley, District Judge.

Lindley, District Judge. Defendants appeal from an order enjoining them from interfering with plaintiff "by violence or threats of violence" in the transportation of interstate freight and in handling goods essential to the prosecution of the war; assaulting or attempting to injure by violence any employee of plaintiff; interrupting or obstructing by force and violence movement of interstate shipments over plaintiff's lines and committing various acts of violence condemned as destructive of or injurious to the persons of employees and officers of plaintiff and to plaintiff's property.

Plaintiff is an interstate carrier operating a railroad between Effner, Indiana and Keokuk, Iowa, through Illinois. Much of its freight is carried interstate, and a substantial portion constitutes goods to be used in the war effort.

In October, 1940, employees of plaintiff selected defendant unions to represent them under the provisions of the Railway Labor Act. 45 U. S. C. A. Sec. 152 (4). Following this plaintiff and the labor organizations submitted counterproposals for settlement of working conditions and rates of pay and negotiations were carried on, with the aid of the National Mediation Board, over a considerable period of time. After the parties failed to agree, plaintiff's request that the Brotherhoods suggest rates of pay under which they would accept plaintiff's proposed rules and working conditions was refused. On November 7, 1941, at a joint conference the Mediator handed the parties arbitration proposals which each declined. The services of the Mediation Board were then terminated in accord with the act, November 21, 1941. Plaintiff then suggested that an impartial committee be appointed to examine the dispute and that an emergency board be appointed by the president. Nothing was done about either suggestion:

Defendants called a strike for December 9, 1941, but it was indefinitely postponed at the request of the Mediation Board. Conferences were again had between the parties, terminating on December 21, 1941, when plaintiff gave notice that its proposed rates of pay, rules and working conditions were to be effective at midnight, December 29, 1941. On December 17 and 28 plaintiff received telegrams from the Mediation Board urging arbitration, but plaintiff refused. A strike was called at midnight, December 29, 1941.

Although the evidence is somewhat conflicting, it discloses continued violence on the part of the strikers. Plaintiff's workers were assaulted, moving trains stoned, trains derailed, windows and lights on the locomotives and cabooses broken, trains stopped, and many threats made against plaintiff's employees. On one occasion a bottle of inflammable liquid was thrown into the engine cab of a moving train, eausing a fire and injuring the occupants.

On January 3, 1942, plaintiff filed complaint against defendants seeking to enjoin their acts, and the District Court issued a temporary restraining order. Within five days plaintiff began to present its evidence in support of its application for the temporary injunction. Due to the number of witnesses and voluminous testimony, the court extended the temporary restraining order on January 8, 1942 and again on January 16. After completion of the evidence, on January 19, 1942, the court issued a temporary injunction.

Defendants seek reversal on five grounds: (1) The court was without authority to extend the temporary restraining order beyond five days; (2) No federal question being involved, the District Court was without jurisdiction; (3) The evidence was insufficient to show that the public officers were unwilling or unable to furnish adequate protection for plaintiff's property; (4) Plaintiff failed to make every reasonable effort to settle the dispute as required under the Railway Labor Act and the Norris-LaGuardia Act; (5) The evidence was insufficient to show that defendants had participated in or ratified any act of violence against or interference with plaintiff.

Section 107 of the Norris-LaGuardia Act (29 U. S. C. A.) is in part:

"A complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days."

Defendant contends that, since under this language a restraining order may be effective for five days only, the two extensions were beyond the court's jurisdiction.

The obvious purpose of the five-day limit was to prevent restraint without a hearing on the question whether substantial and irreparable injury has been done to the employer, for so long a time as to affect materially the effort of the striking employees. But to hold that the provision denies the power of the court to continue the restraining order more than five days regardless of whether the hearing on application for temporary injunction is completed. would completely destroy the purpose of the legislation. There is ordinarily no reason why such hearing can not be begun within five days, but not infrequently it can not be completed within that time. Here, it required approximately two weeks. Obviously if the order had been dissolved within five days, there would have been a period of over a week during which defendants' acts, if unrestrained. might well have caused further irreparable damage. The purpose was to prevent possibility of irreparable damage

and to preserve the existing status until an early hearing would determine whether or not a temporary injunction should be issued.

Furthermore if the order for a temporary injunction granted by the District Court was proper, any error in extending the restraining order is not before this court, for that order merged in the injunction. City of Rero v. Sierra Pacific Power Co., 44 Fed. (2d) 281, 283 (C. C. A. 9). The question involved here is the propriety of the injunction. If it was proper, the restraining order was proper. If it was improper, plaintiff's case fails and the propriety of the restraining order is of no importance.

Defendants question the jurisdiction of the District Court. Under the Judicial Code, the District Court has original jurisdiction in controversies exceeding \$3,000 which a rise under the Constitution or laws of the United States, 28 U.S. C. A. 41-1, and of all suits and proceedings arising under any law regulating commerce, 28 U.S. C. A. 41-8. Since no diversity of citizenship is involved, the question depends upon whether the proceedings arise under the Constitution and laws of the United States, or, more narrowly, constitutes a suit under any law regulating commerce. Plaintiff is a common carrier of freight by railroad in interstate commerce. It insists that it is subject to and entitled to protection under the Interstate Commerce Act, 49 U.S. C. A.; the Railway Labor Act, 45 U.S. C. A., sees. 151:160 and the War Utilities Act, 50 U.S. C. A., sees.

The mere fact that Congress has paramount power to legislate in cortain fields is not alone sufficient to confer jurisdiction. Thus the fact that a patent is involved will not result in federal jurisdiction if the real issue concerns merely title to the patent, for that is not a matter arising under a federal law. Laning v. National Ribbon & Carbon Co., 125 Fed. (2d) 564 (C. C. A. 7). Similarly, if one of the parties is engaged in interstate commerce and subject to regulation under a federal statute, the court has no jurisdiction of matters concerned solely with a contract between the adverse parties. Louisville & N. Ry. v. Mottley. 211 U. S. 149; State Auto Ins. Assu. v. Parry, 123 Fed. (2d) 243 (C. C. A. 8). To give rise to federal jurisdiction, the basis of the suit must be concerned with the validity, construction enforcement or effect of the statute; anything less is insufficient. Shulthis v. McDougall, 225 U. S. 561;

101-105.

Sharp v. Barnhart, 117 Fed. (2d) 604 (C. C. A. 7); Stenger v. Stenger Eroadcasting Corp., 28 Fed. Supp. 407 (D. C. Pa.); Partridge Lumber Co. v. Michigan Central Ry., 26 Fed. (2d) 615 (C. C. A. 8); Peyton v. Railway Express, 124 Fed. (2d) 430 (C. C. A. 5); Postal Telegraph v. Nolan, 240 Fed. 754 (D. C. Mont.).

We well know that the mere fact that Interstate Commerce is involved and may be affected, is not sufficient to justify jurisdiction of a private suit seeking protection of such commerce. Sharp v. Barnhart, 117 Fed. (2d) 604 (C. C. A. 7); Postal Telegraph v. Nolan, 240 Fed. 754 (D. C. Mont.). But if the suit directly concerns an Act of Congress a carrier may seek relief in a federal court. Thus, In re Lennon, 166 U.S. 548 arose out of a labor dispute in which defendant railroads and employees refused to interchange traffic with plaintiff so long as the latter employed nonunion labor. The Commerce Act provides that carriers must provide reasonable facilities for such interchange. The court held that the acts of defendants directly affected a right and duty of plaintiff arising from the Commerce Act and that the Circuit Court had jurisdiction, since it was the duty of all railroads to furnish reasonable facilities for the interchange of interstate traffic. Toledo, A. A. & N. M. Ry. v. Pennsylvania Co., 54 Fed. 730 (C. C. Ohio). See also Wabash Ry. v. Hannahan, 121 Fed. 563 (C. C. Mo.); Knudsen v. Benn, 123 Fed. 636 (C. C. Minn.); Stephens v. Ohio State Telephone Ce., 240 Fed. 759 (D. C. Ohio).

The Interstate Commerce Act includes no specific provision as to restraint of violent strikes against a carrier engaged in interstate commerce at the suit of the carrier. We are not concerned with the right of the United States to enjoin those who interfere with or obstruct interstate commerce, as in In re Debbs, 158 U. S. 564, but with whether a private party may seek federal court aid to the same end. Our question then is whether plaintiff has rights and obligations under Federal Acts, the enjoyment and discharge of which defendants are preventing. If so a statute of the United States is directly involved and the District Court had jurisdiction.

It is, under Section 1 (4) of the Interstate Commerce Act, the duty "of every common carrier subject to the provisions of this chapter engaged in the transportation of passengers or property to provide and furnish such trans-

portation . . . to establish through routes . to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes * * * "; under section 1 (6), "to establish • • • facilities for transportation, the carrying of personal, sample and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivering of property subject to the provisions of this chapter, which may be necessary or proper to secure the. safe and prompt receipt, handling, transporting, and delivering of property subject to the provisions of this *"; under section 1. (4) "to provide chapter and furnish transportation upon reasonable request therefor; to establish reasonable through routes with other such carriers, and * * * to provide reasonable facilities for operating such routes"; under section 1 (11) "to furnish safe and adequate car service * * *'; under section 1 (18) ... no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until there shall have first been obtained from the commission, a certificate that the present or future public convenience and necessity permit such abandonment." And section 1 (20) provides: "Any abandonment contrary to the provision of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulatory body of the state or states affected, or any party in interest .

Title 18 U. S. C. sec. 412 (a) is as follows: "Whoever shall willfully derail, disable, or wreck any train, engine, motor unit, or car used, operated, or employed in interstate or foreign commerce by any railroad, or whoever shall willfully set fire to, or place any explosive substance on or near, or undermine any tunnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property or appurtenance used in the operation of any such railroad in interstate or foreign commerce, or otherwise make any such funnel, bridge, viaduct, trestle, track, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance unworkable or unusable or hazardous to work or use, with the intent to derail, disable, or wreck a train,

engine, motor unit, or car used, operated, or employed in interstate or foreign commerce or whoever shall willfully attempt to do any of the aforesaid acts or things, shall be deemed guilty of a crime."

From these provisions and others it is clear that a carrier in interstate commerce is bound, not only to furnish carrying facilities for anyone desiring them, but to supply "necessary, proper, adequate and safe" facilities. During the course of violence such as occurred here the carrier is rendered unable to furnish such facilities. Thus, plaintiff's properfy was injured, goods carried endangered, a locomotive set on fire and plaintiff's trains delayed and even prevented from operating.

Congress has seen fit to impose certain duties upon a common carrier engaged in interstate commerce, and the failure to perform such duties subjects the carrier to liability. It can not be that Congress imposed duties, and yet intended that the carrier should be denied federal relief from interference with carrying out such duties. Congress having set up certain requirements which the carrier must meet, when others seek by violence to prevent it from meeting those statutory obligations, it should be permitted to seek protection in a court of equity of the sovereignty imposing the obligation. Wabash R. R. v. Hannahan, 121 Fed. 563, 573 (C. C. Mo.).

In the instant case, the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service. Yet Section 1 (18) and Section 1 (20) specifically prohibit abandonment of operations. Since Congress has prohibited such cessation of activity in commerce, the actions of defendants in halting operations, immediately impaired plaintiff in its ability to comply with the federal act and to abide by the statutory prohibitions. Furthermore Congress has forbidden interference with commerce and made violent interference criminal. 18 U. S. C. A. Sec. 409.

In suits arising under the constitutional laws of the United States concerning the words "Arising under the Constitution or laws of the United States, or treaties made or which shall be made under their authority," the statement has been made that the proceedings of the Constitutional Convention manifest "a settled purpose to include within the federal judicial jurisdiction all questions which involve the national peace and harmony and that the word

'questions' includes every issue capable of a judicial determination.' King v. McLean Asylum of Massachusetts General Hospital, 64 Fed. 331. A claim of the protection of a federal law, requiring its construction, or of a right or privilege given by a federal law makes a federal question. Richards v. Town of Rock Rapids, 31 Fed. 505; Iowa Loan & Trust Co. v. Fairweather, 252 Fed. 605.

In cases where a federal statute imposes upon a private party, duties and obligations to be performed, the courts quite generally have approved jurisdiction in the District Court of suits brought by such parties to prevent interference with the performance of their obligations under the federal statutes and under the commerce law. have held that if interstate traffic is hindered, delayed and burdened to such extent as to amount to unlawful interference with such commerce, a cause of action exists calling for equitable relief. Southern Pac. Co. v. Peterson. 43 Fed. (2d) 198 (D. C.); Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567 (D. C.); Ex-parte Lennon, 166 U. S. 548; Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 (D. C.); Glenwood Light etc. Co. v. Mutual Light etc. Co., 239 U. S. 121, 60 L. Ed. 174, 36 Sup. Ct. 32; Stephens v. Ohio State Telephone Co., 240 Fed. 759 (D. C.); Carmichael v. Anderson, 14 Fed. (2d) 166 (D. C.).

Thus in Stephens v. Ohio State Telephone Co., 240 Fed. 759, 768 (D. C.), the court said: "The several sections of the act * * require telephone; companies to afford allreasonable facilities for the transaction of business for which they are chartered and which they engage to carry on through their contracts, and subject them, as in case of other instrumentalities of interstate traffic, to heavy penalties for failure to comply with these obligations. As we read the statutes, the same law and procedure are applicable to them which safeguard public and private interests in the operation of any other business engaging in interstate commerce, and we find the jurisdiction of the federal courts over analogous controversies upheld by a long line of decisions touching so great variety of phases of dereliction that we may safely say we have here one belonging to the same category.":

We conclude that the court had jurisdiction of the subject matter.

Defendants insist that the evidence was insufficient to

show that public officers were unable or unwilling to furnish adequate protection for plaintiff's property.

Section 107 of the Norris LaGuardia Act (29 U.S.C.). provides that: "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute " except after findings of fact by the court to the effect " (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

The evidence disclosed that plaintiff's workers were assaulted and injured, trains stopped and damaged, and that repeated acts of violence occurred. The sheriff of Peoria County testified that he could not protect plaintiff's line properly because of his inadequate force, and he and his deputies did nothing to prevent violence. The sheriff of Tazewell County had only four men to patrol the whole county and was doubtful as to the help he could give. When violence broke out in East Peoria, the Chief of Police was called upon for aid and, although the police station was only about five minutes distant from the scene of events, no help arrived until forty-five minutes after the damage had been effected. The president of plaintiff sent telegrants to the sheriffs of every county in which plaintiff operates, advising them that plaintiff's trains were being interfered with by acts of violence and requesting protection of its trains within each county. Some sheriffs failed to reply, others answered that they did not have the funds or means to give such protection. and only one sheriff replied that he would give such pretection . "as he could." Plaintiff's railroad extended across the entire width of Illinois, and a part of Iowa and Indiana, and the violence and threats of violence from striking employees were spread over the entire distance. Obviously a great number of police officers and extended cooperation by the public authorities were, essential to adequate protection.

The District Court found that the public officers under duty to protect plaintiff were either unable or unwilling to furnish adequate protection. Although some conflict appears, the evidence is sufficient to show inability or unwillingness of the public officers to protect plaintiff. The trial judge had opportunity to hear all the evidence to observe the witnesses and to weight their testimony.

In this situation we can not reverse the court's finding of fact in view of the fact that it was not against the manifest weight of the evidence. Cater Construction Co.v. Nischwitz. 111 Fed. (2d) 971 (C. C. A. 7).

Defendants also contend that plaintiff failed to comply with its statutory duty when it refused to arbitrate, required by the Railway Labor Act, 45 U. S. C. A., section 157, and the Norris-LaGuardia Act, 29 U. S. C. A. section 108.

The Railway Labor Act provides that: "Whenever a controversy shall arise between a carrier " and its " employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation " such controversy may, by agreement of the parties to such controversy, be submitted to arbitration. " Provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise."

The Norris-LaGuardia Act provides: "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Plaintiff conceded that it refused to arbitrate. An examination of the record indicates, however, that it made an effort by mediation to reach a satisfactory arrangement with defendants, and that, after nearly a year of negotiations, the Mediation Board terminated the proceedings after arbitration proposals submitted by it were refused by both parties. Plaintiff further sought to reach a satisfactory agreement with defendants by suggesting that an emergency board be appointed by the President, as well as that an impartial committee be appointed to examine the dispute. It is thus apparent that there was no lack of good faith by plaintiff to bar its right to an injunction because of refusal to arbitrate. There is no compulsion on plaintiff to settle the differences between the parties or to enter into any agreement but merely to make

a reasonable effort to compose differences. Virginian Ry. v. Federation, 300 U.S. 515, 548.

The Railway Labor Act expressly provides that arbitration is not a condition precedent to securing an injunction. The Act states that on failure of other means, the parties "may" arbitrate, "provided, however," that refusal "shall not be construed as a violation of any legal obligation." Accepting the obvious intent of this section, it is clear that arbitration is not mandatory but voluntary, and that failure to arbitrate is not sufficient to bar legal action. Texas & N. C. Ry. v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548, 564.

It is likewise clear that under the Norris-LaGuardia Act, plaintiff was not required to arbitrate. The Act specifically says that arbitration is voluntary, not compulsory, and further that the employer must make every reasonable effort to settle a dispute either by negotiation or mediation, or voluntary arbitration before he may obtain injunctive relief. The employer is not compelled to avail himself of all three methods; any one of them will fulfill the requirements. Thus in Mayo v. Dean, 82 Fed. (2d) 554, 556 (C. C. A. 5) it was held that the employer is not obliged to propose both mediation and arbitration. Furthermore we have held that where violence and threats of violence are committed, Section 108 has no application. Cater Construction Co. v. Nischwitz. 111 Fed. (2d) 971 (C. C. A. 7); United Electric Coal Co. v. Rice, 80 Fed. (2d) 1 (C. C. A. 7); Newton v. Laclede Steel Co., 80 Fed. (2d) 636 (C. C.

Defendants further contend, however, that plaintiff gave only eight days' notice of the change affecting rates of pay, rules and working conditions, contrary to the obligation imposed by the Railway Labor Act, 45 U.S. C. A., sec. 156. Section 156 provides that carriers shall give at least 30 days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, but that, when the services of the Mediation Board are involved, the rates of pay, rules, and working conditions shall be frozen until the Board has acted upon them according to Section 155. Under Section 155, it is provided that if arbitration at the request of the board shall be refused, the Board shall notify both parties that mediatory efforts have failed, and that there shall be no change in rates of pay, rules, or working conditions for 30 days.

From these two sections, it is clear that section 155 is applicable, since the differences had been submitted to the Mediation Board, arbitration had been refused, and the parties had been notified that mediatory efforts had failed. Thus, if 30 days had elapsed from the time the Mediation Board gave its notice to the parties, plaintiff was within the act.

On December 17, 1940, and January 7, 1941, plaintiff delivered its proposed schedules of rules, working conditions and rates of pay. The services of the Mediation Board were invoked on January 15, 1941, and attempts to reach an agreement between the parties continued by the Board until November 21, 1941, when both parties refused to arbitrate and the Board terminated its mediation efforts. Prior to this, plaintiff had submitted its revised and amended proposals of rates of pay, rules and working conditions on November 3, 1941. On December 21, 1941 plaintiff notified defendants that its revised schedules would go into effect on December 29, 1941, and at 12:01 a. m. December 29, 1941 defendants struck. knew of plaintiff's revised schedule November 3, 1941, and the Mediation Board gave written notification of its withdrawal from the mediation proceedings on November 21, 1941. Both events occurred more than 30 days prior to the date when plaintiff's orders were put into effect. Since section 155 was the guiding section when the controversy was submitted to the Mediation Board, and more than 30 days had elapsed after the Board's withdrawal before any change in plaintiff's rates of pay, rules and working conditions, plaintiff complied with the Act.

Defendants finally contend that the evidence was insufficient to justify an injunction against all defendants, and that under Section 106 of the Norris-LaGuardia Act no labor organization interested in a labor dispute can be held responsible except upon clear proof of actual participation. The evidence was that officers of the union as well as many of the members had engaged in actual violence and that at at least one meeting plans for the strike had been discussed. The evidence was sufficient to justify the court in finding that the unions, as well as the individuals, were intimately concerned in the violence engaged.

The judgment is

Minton, Circuit Judge, Dissenting. I am unable to agree with the majority opinion. In the first place, I do not think the District Court had any judisdiction. This is not a case where diversity of citizenship forms the basis of jurisdiction. Here jurisdiction depends upon whether or not the controversy arises under the Constitution or laws of the United States. It is not a question of whether Congress could have taken cognizance of this kind of controversy; it is a question of whether or not it has taken such cognizance.

To give jurisdiction, the controversy must arise under the Constitution or laws of the United States. What is the controversy here? It is the right of the plaintiff to conduct its business of interstate carrier free from interference and violence at the hands of its striking employees That right does not stem from the Constitution or any law of Congress. It does not even arise out of the interstate character of the business. The same identical right to be free from interference and violence in the conduct of its business runs to those engaged in intrastate business The right violated is a common law right given by the State of Illinois and the other States through which the plaintiff's road runs. The right could have been enforced in any one or all of the States through which the plaintiff's The fact that the plaintiff was engaged in interstate commerce and some Federal statutes imposed some duties pertaining thereto, or that the plaintiff was carrying defense materials, is of no consequence on the question of jurisdiction. Such matters are only incidental If the plaintiff can invoke the jurisdiction of the United States courts because its striking employees are inter fering with its business as an interstate carrier, there every one who is engaged in interstate commerce has the right to claim the jurisdiction of the Federal courts to pro tect his common law rights. It takes no great imagina tion to envisage what that would mean to the expansion of Federal jurisdiction in this day and age, when the con cept of what constitutes interstate commerce under the Constitution has been so greatly extended.

As I understand the basis of the jurisdiction here claimed, the controversy which it is sought to resolve must stem from the Constitution or some act of Congress Whenever the Constitution or an act of Congress give rise to a right of action, a suit brought to enforce that right may be said to arise under the Constitution or laws of the United States so as to satisfy the jurisdictional requirement, and not otherwise.

This has been the accepted interpretation since the days of Chief Justice Marshall. In Cohens v. Virginia, 6 Wheat. 264, 379, 5 L. Ed. 257, 285, he said:

"A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the constitution of a law of the United States, whenever its correct decision depends on the construction of either."

A case whose correct decision depends upon the construction of the Constitution or laws of the United States is what gives jurisdiction. The case at bar depends upon no construction of any part of the Constitution or laws of the United States. It seeks only the enforcement of a common law right.

Again in Osborn v. United States Bank, 9 Wheat, 738, 822, 6 L. Ed. 204, 224, Chief Justice Marshall said:

"A cause may depend on several questions of fact had law. Some of these may depend on the construction of a law of the United States; others on principles unconnected with that law. If it be a sufficient foundation for jurisdiction, that the title or right set up by the party, may be defeated by one construction of the constitution or law of the United States, and sustained by the opposite construction, provided the facts necessary to support the action be made out, then all the other questions must be decided as incidental to this, which gives that jurisdiction."

In Niles Bement Co. v. Iron Moulders Union, 254 U. S. 77, 82, 41 S. Ct. 39, 65 L. Ed. 145, a suit to enjoin striking employees from interfering with a corporation's business so as to cause delay in the fulfillment of its contracts with the Government to furnish war supplies and so as to impede its interstate business, the Supreme Court, speaking by Mr. Justice Clarke, said:

"The allegations of the bill that the contracts which the petitioner had with the United States Government were of a character which must be given priority under Sec. 120 of the National Defense Act, approved June 3, 1916 (39 Stat. 166, 213), and that they involved interstate commerce, are much too casual and meager to give serious color to the claim now made that the cause of action asserted is one arising under the laws of the United States."

In Gully v. First National Bank, 299 U. S. 109, 112, 114, 57 S. Ct. 96, 81 L. Ed. 70, 72, an action was brought in the State court by the State Collector of Taxes against the defendant bank that had assumed the debts and obligations of another bank. Among the debts assumed were taxes levied upon the shares of stock of the bank. Because the right of the State to assess the stock of a national bank was granted by an act of Congress, a petition of removal was granted to the District Court on the ground that it was a suit arising "under the Constitution or laws of the United States." The Supreme Court held there was no Federal jurisdiction, and remanded the case to the State court. Mr. Justice Cardozo said:

"The right or immunity must be such that it will be supported if the Constitution or laws of the United States are—given one construction or effect, and de-

feated if they receive another. . . .

"A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends.' Shulthis v. McDougal, 225 U. S. 561, 569 'the federal nature of the right to be established is decisive—not the source of the authority to establish it.' (Puerto Rico v. Russell & Co., 288 U. S. 476, 483.)"

What law of the United States if given one construction will sustain the plaintiff's right, and if given another will deny it? Obviously, the construction of no law of the United States is involved in the right the plaintiff asserts. It is a common law right, not a Federal right that is asserted. "The federal nature of the right to be established is decisive," the Supreme Court says. There can be no Federal nature in a common law right.

In McGoon v. Northern Pacific Ry. Co., 204 Fed. 998, 1001, 1005, the court lays down the rule thus:

"Whenever federal law grants a right of property of of action, and a suit is brought to enforce that right, such a suit arises under the law creating the right. within the meaning of statutes defining the jurisdiction of federal courts."

After reviewing numerous cases, the same court says:
"The line of distinction which it seems to me will go far to harmonize the cases is this: when the complaint shows a case which arises out of a contract or a common law right of property, and only indirectly and remotely depends on federal law, such a case not only does not, but cannot properly, turn upon a construction of such law."

From the rules enunciated so clearly in these cases, it seems apparent to me that no case under the Constitution or laws of the United States is presented, and the court is without jurisdiction and the case should be dismissed.

If, however, I am mistaken on the question of jurisdiction, there is a ground upon which the judgment of the District Court should be reversed and the plaintiff denied the relief sought.

After mediation had failed, the mediator proposed arbitration. The plaintiff refused to arbitrate. The majority opinion neglected to state that the defendants offered to arbitrate. Voluntary arbitration is provided for by statute. (45 U.S.C.A. Sec. 157 et seq.) When negotiations between the parties and through the National Railroad Adjustment Board and the National Mediation Board have failed, the statute provides for voluntary arbitration. It is the purpose and the spirit of the Railway Labor Act to use all means of negotiation, mediation and arbitration to the end that controversies between the carriers and their employees may be resolved without conflict or strikes. The plaintiff was willing to pursue all the voluntary procedures set up by the Railway Labor Act which carried no sanction, but it refused to take the step into voluntary arbitration, because the award of the arbitrators was enforceable in a court of law. So the plaintiff refused to arbitrate.

The plaintiff exercised its right to refuse to arbitrate, and it did it without any excuse or justification. The District Court made no finding that it would have been useless or unreasonable for the parties to attempt to arbitrate their differences. The plaintiff stood upon its right to refuse to arbitrate, and this refusal without justifica-

tion or reason, brought into play another provision of law known as Section 8 of the Norris-LaGuardia Act (29 U. S. C. A. Sec. 108), which provides:

"Sec. 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation

or arbitration as preventing injunctive relief,

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. Mar. 23, 1932, c. 90, sec. 8, 47 Stat. 72."

As we said before, the plaintiff did not have to arbitrate. One does not have to register for a ration card, but if one does not, one gets no sugar. Plaintiff could spurn, as it did without rhyme or reason, the offer to arbitrate, but if it did, it lost the right to come into a court of the United States to obtain relief by injunction.

I am not prepared to agree that this court has held that where violence and threats of violence are committed, Section 108 has no application. Cater Const. Co. v. Nischwitz, 111 F. 2d 971, 977, and the cases it relies upon go only to the extent of holding that Section 108 does not apply if it is found or is apparent from the proceedings that negotiation would be useless. That takes the place of a reasonable effort to settle by negotiation, mediation and arbitration. The law does not require a futile thing, and if there is a finding to the effect that efforts to negotiate, mediate or arbitrate would be futile, that would be one thing. No such finding is present in the case at bar.

Neither am I prepared to agree that a reasonable effort to do either one of three things, to wit, negotiate, mediate or arbitrate, will satisfy the provisions of Section 108. Mayo v. Dean. 82 F. 2d 554, relied upon by the majority, holds that Section 108 is not applicable to the case before them, but if it were applicable, they would hold its requirements had been met by mediation. Such a limited construction does not meet the situation Congress intended to remedy. The whole purpose of the Railway Labor Act is to induce settlement by voluntary negotiation, mediation and arbitration of all questions in dispute between employer and employee. It is the purpose of the Norris-

LaGuardia Act to deny the aid of a Federal court of equity to one who has not exhausted his remedies for voluntary adjustment. Why should the courts of equity be open to a party who spurns the machinery for the voluntary adjustment of the dispute? There never would have been a strike in the case at bar if the plaintiff had accepted the offer of the employees to arbitrate. Once both parties had entered into arbitration, they were bound by the ultimate award of the arbitrators. (45 U. S. C. A. Section 159.)

. One cannot in the absence of statutory authority claim the equitable jurisdiction of a Federal court until all administrative remedies have been exhausted. *Muers* v. *Bethlehem Corp.*, 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638; *Natural Gas Co.* v. *Stattery*, 302 U. S. 300, 58 S. Ct. 199, 82 L. Ed. 276.

Since arbitration would have averted a strike, this means should have been exhausted before resort to a court of equity was claimed. The plaintiff's property was in no way molested or in danger until after the strike was called. The strike was called after the plaintiff refused to arbitrate. The plaintiff was in no position to demand the aid of a court of equity:

In this view of the case, the judgment should be reversed.

Endorsed: Filed Dec. 16, 1942. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the sixteenth day of December, 1942, the following proceedings were had and entered of record, to-wit:

Wednesday, December 16, 1942.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge. Hon. Sherman Minton, Circuit Judge. Hon. Walter C. Lindley, District Judge.

Toledo, Peoria & Western Railroad, Plaintiff-Appellee, 7951 vs. The Brotherhood of Railroad Trainmen, Enterprise Lodge No.

Defendants-Appellants.

Appeal from the District Court of the United States, for the Southern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Northern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the orders of the said District Court in this cause appealed from be, and the same are hereby, affirmed.

with costs.

27, et al.,

And afterwards, to-wit: On the fifteenth day of January, 1943, the following further proceedings were had and entered of record, to-wit:

Friday, January 15, 1943.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge. Hon. Sherman Minton, Circuit Judge. Hon. Walter C. Lindley, District Judge.

Toledo, Peoria & Western Railroad, Plaintiff-Appellee,

The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27. et al..

Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied. Judge Minton does not concur.

And afterwards, to-wit: On the twenty-third day of January, 1943, there was filed in the office of the Clerk of this Court, a praccipe for record, which said praccipe for record is in the words and figures following, to-wit:

APPEAL TO

THE SUPREME COURT OF THE UNITED STATES,

From the United States Circuit Court of Appeals,

For the Seventh Circuit.

Toledo, Peoria & Western Railroad,
Plaintiff-Appellee,
vs.
The Brotherhood of Railroad
Trainmen, Enterprise Lodge No.
27, et al.,
Defendants-Appellants.

To: Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals:

PRAECIPE FOR RECORD.

The Clerk is hereby requested to prepare a record to be filed with the Clerk of the United States Supreme Court by the defendants-appellants herein, to support a Petition for Writ of Certiorari. It is requested that said record shall contain:

(1) The complete printed record filed in this Circuit Court of Appeals.

(2) The majority and dissenting opinion of this Court.

(3) The order of this Court on Petition for Rehearing.

(4) The judgment of this Court.

John E. Cassidy, Attorneys for Defendants Appellants.

State of Illinois, County of Peoria. ss.

John E. Cassidy, being duly sworn and under oath, deposes and states that he dispatched a true and complete copy of this Praecipe for Record to Attorney John M. Flliott, Alliance Life Building, Peoria, by depositing the same in the United States Mail addressed to said atterney.

Affiant further states that said John M. Elliott has been and is one of counsel for plaintiff-appellee herein.

John E. Cassidy.

Subscribed and sworn to before me this 22nd day of January, A. D., 1943.

(Seal)

Cecelia Dwyer, Notary Public.

Endorsed: Filed Jan. 23, 1942. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-sixth day of January, 1943, there was filed in the Office of the Clerk of this Court, a designation of additional portions of record on appeal, which said designation is in the words and figures following, to wit:

APPEAL TO

THE SUPREME COURT OF THE UNITED STATES.

From the United States Circuit Court of Appeals,

For the Seventh Circuit.

Toledo, Peoria & Western Railroad, Plaintiff Appellee, vs.

The Brotherhood of Railroad 7951.

Trainmen, Enterprise Lodge No. 27, et al.,

Defendants-Appellants.

To: Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals:

DESIGNATION OF ADDITIONAL PORTIONS OF RECORD ON APPEAL.

Now comes Toledo, Peoria & Western Railroad, plaintiff-appellee herein, and designates the following additional portions of the contents on record on appeal:

(1) Original plaintiff's exhibits 1 to 31, both inclusive, in lieu of copies thereof, to be forwarded to the Clerk of

the Supreme Court of the United States by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, said exhibits being specified in petition for order directing the Clerk of the District Court to send plaintiff's original exhibits to the Clerk of the Circuit Court of Appeals filed April 27, 1942 and shown on page 1012 of the printed record herein, which said exhibits are now on file with the Clerk of the Circuit Court of Appeals for the Seventh Circuit pursuant to order on said petition entered April 27, 1942 and shown on page 1013 of the printed record in this cause.

John M. Elliott, Clarence W. Heyl, Attorneys for Plaintiff-Appellee.

John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois, and

Clarence W. Heyl,
Central National Bank Building,
Peoria, Illinois,
Attorneys for Plaintiff-Appellee.

State of Illinois, County of Peoria.

John M. Elliott, being first duly sworn upon oath, deposes and states that he dispatched a true and correct copy of the above and foregoing designation of additional portions of record on appeal in this cause to John E. Cassidy, Jefferson Building, Peoria, by depositing the same in the United States Mail addressed to said attorney on the 25th day of January, A. D. 1943.

Affiant further says that the said John E. Cassidy has been and is one of counsel for defendants-appellants

herein.

(Seal)

John M. Elliott.

Subscribed and sworn to before me this 25th day of January, A. D. 1943.

Esther M. Schulthes, Notary Public

Endorsed: Filed Jan. 26, 1943. Kenneth J. Carrick. Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed made in accordance with the praecipe for record filed January 23, 1943 and designation of additional record filed on January 26, 1943, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad, Plaintiff-Appellee.

vs.

The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.,

Defendants-Appellants.

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

(Seal) Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7074)

FILE COPY

D'LLAND

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1942.

No. 848 28.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners.

VS.

TOLEDO, PEORIA & WESTERN RAILROAD,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI

BRIEF IN SUPPORT.

JOHN E. CASSIDY, LOUIS F. KNOBLOCK, JOHN F. SLOAN, JR., Attorneys for Petitioners.

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The People v. Nellis, 249 Ill. 12, p. 23	25
Toledo Ry. Co. v. Pennsylvania Co., 54 Fed. 730	19
United States v. Standard Brewery Co., 251 U. S. 210,	
217, 64 L. ed. 229, 234	12
Wabash Co. v. Hanahan, 121 Fed. 563	19
Statutes Cited.	
Interstate Commerce Act:	
Air carriers (Civil Aeronautics Act of 1938, Sec. 401,	
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987. U.S. C. Title 49 Sec 481) 99	93

Common carriers (Part II, Section 16, Act of June
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Pipe line companies, express companies, sleeping
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Power companies (Federal Power Act, Act of June
10, 1920, Ch. 285, Sec. 201, U. S. C., Title 16, Sec.
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Telegraph companies (Act of Aug. 7, 1888, Ch. 772,
Sec. 2, 25 Stat. 383, U. S. C., Title 47, Sec. 10) 22
Telephone, telegraph and radio companies (Commu-
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1934, Ch. 652, Sec. 201, 48 Stat. 1070, U. S. C.,
Title 47, Sec. 201)
Water carriers (Part III of the Interstate Commerce
Act, Sec. 305, Act of Sept. 18, 1940, ch. 722, Title
II, Sec. 201, 54 Stat. 934, U. S. C., Title 49, Sec.
905)
Judicial Code, Sec. 240 (a), as amended by Act of Feb.
13, 1925, Ch. 229, Sec. I, 43 Stat. 938 (U. S. C. A.,
Title 28, Sec. 347) 5, 8
Norris-La Guardia Act (Act of March 13, 1932):
Sec. 4, Ch. 90, 47 Stat. 70
Sec. 7, Ch. 90, 47 Stat. 71
Sec. 8, Ch. 90, 47 Stat. 72
Smith-Hurd Illinois Rev. Statutes:
Ch. 24, Sec. 9
Ch. 38, Sec. 449
Ch. 125, Sec. 18

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1942.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners,

VS.

TOLEDO, PEORIA & WESTERN RAILROAD, - Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of the Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al., respectfully shows to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition is for review of a Seventh Circuit Court of Appeals judgment affirming an injunction in a labor dispute. There is no diversity of citizenship. The District Court for the Southern District of Illinois restrained strik-

ing employees from extensive picketing and violence. The Court of Appeals affirmed through an opinion (132 Fed. [2d] 265) by District Judge Lindley, in which Justice Sparks joined (R. 1020). Circuit Judge Minton filed a dissenting opinion (R. 1032) in which he held lack of a federal question and no jurisdiction, and also that plaintiff railroad failed to meet requirements of the Norris-La Guardia Act, in that it refused to make reasonable efforts to settle the dispute before the strike and prior to seeking equitable relief in court.

The District Court issued a temporary restraining order January 3, 1942, without notice on the day the complaint was filed. The order was extended on January 8, 1942, and again on January 16th. After evidence a temporary injunction was issued on January 19, 1942. Contempt proceedings were later brought in the District Court (R. 985-989).

SUMMARY AND STATEMENT.

Plaintiff railroad is an Illinois corporation. Its road extends from Indiana to Iowa through Illinois. It had 600 employees (R. 760), but only 104 were conductors, engineers and firemen, who went on strike December 29, 1941. In October, 1940, the two Brotherhoods became union representatives of these 104 employees, according to the Railway Labor Act. Negotiations ensued with the aid of the National Mediation Board for rates of pay and working conditions, but terminated November 6, 1941, without an agreement. The Brotherhoods called a strike for December 9th, but agreed to an indefinite postponement after the attack on Pearl Harbor. Negotiations were resumed, but an agreement was not reached. The employees, however, remained at work under the old conditions and pay.

On December 17th and again on December 28th the National Mediation Board requested the Railroad and the

employees to submit to arbitration in view of the national emergency (R. 791). The employees agreed but the employer refused and has maintained its refusal up to the present (R. 789).

On December 21st the Railroad served notice that its own rates of pay and working conditions would go into effect December 29th (R. 11). The 104 employees had the alternative to accept or withdraw from service. They quit work December 28th and plaintiff supplanted them with nonunion employees.

Picket lines were formed and there were incidents of assault and violence on December 29th, 30th, 31st and January 1st and 2nd (R. 137, 148, 171, 189). During the strike plaintiff employed twenty-nine armed guards or special agents to ride the trains (R. 784). One of the strikers, Dilley (R. 824), was shot as he stood near the right of way by a special agent in the cab of a locomotive. The only substantial damage to property was shattered glass in cabs, headlights and switches. Plaintiff did not cease operation of its road but there were some temporary delays. Two individuals were arrested (R. 82, 393, 839). The record discloses no other request for arrests during the strike. Practically all complaints of violence originated in Peoria and adjoining County of Tazewell, Illinois (main office of plaintiff). Mr. Beste, superintendent of plaintiff, testified (R. 76) that the police chief of the Village of East Peoria told him ample protection could not be guaranteed but Beste said he knew of no occasion when police refused to respond to the scene of a disturbance.

The only public official called as a witness by plaintiff was the Sheriff of Peoria. He told of a phone conversation with Mr. McNear, president of plaintiff, in which the Sheriff assured he would do all he could to protect the road but mentioned his force was limited (R. 380). This was the only occasion a representative of plaintiff

contacted this Sheriff except January 2nd (R. 382), when the Sheriff's office had a phone call about probable trouble. Deputies were immediately dispatched. On December 31st plaintiff's president requested Sheriff Donahue of Tazewell County to post deputies on twenty-four-hour duty on the lane at the entrance to plaintiff's property where the strikers were picketing. The request was complied with (R. 724). On January 2nd Mr. McNear sent telegrams to the sheriffs of eleven Illinois counties through which the road operated (R. 734, 746) and requested each sheriff to telegraph whether he would furnish protection by supplying men "to ride and convoy the trains" through the respective county. Some sheriffs did not reply. Others said they would afford protection but could not supply officers to ride the trains (R. 735).

The complaint, which cover forty pages of the printed record (R. 3-43), was filed on Saturday, January 3rd, within twenty-four hours after Mr. McNear dispatched his telegrams. An ex parte hearing was held before the Court on Saturday afternoon and a restraining order issued the same day without prior notice to defendants.

The complaint charges a federal question or jurisdiction by averring that plaintiff is subject to Acts of Congress (R. 3), i. e., "An Act to Regulate Commerce, the Railway Labor Act of U. S., and a Federal Statute entitled War Utilities." Also by averring (R. 28) that jurisdiction is invoked because of rights given plaintiff by the Constitution and Laws of the United States.

Defendants' answer denied a federal question and jurisdiction. The answer also denied averments of the complaint about violence and that public officers were unable or unwilling to furnish adequate protection for plaintiff's property. The answer averred (R. 994) that the plaintiff refused reasonable efforts to settle the dispute with the aid of governmental machinery for negotiation, mediation and voluntary arbitration.

Both by his oral announcement and written order awarding the injunction (R. 955, 976) the District Judge decided there was a federal question in the controversy and jurisdiction because of the Act of Congress, namely, "An Act to Regulate Commerce," and all acts amendatory and supplementary thereto.

OPINION OF THE CIRCUIT COURT OF APPEALS.

The Seventh Circuit Court of Appeals' opinion is reported in 132 Fed. (2d) 265 and set forth in the record (R. 1020). It also finds a federal question and jurisdiction of the subject matter because of the Interstate Commerce Act.

BASIS OF JURISDICTION OF THIS COURT TO REVIEW JUDGMENT.

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Ch. 229, Section I, 43 Stat. 938 (U. S. C. A., Title 28, §347), providing for review by this Court by certiorari. Judgment of the Circuit Court of Appeals affirming the judgment of the District Court was entered December 16, 1942 (R. 1038). Petition for rehearing was denied January 15, 1943 (R. 1038).

THE QUESTIONS PRESENTED.

- 1. Whether Section 7 of the Norris-La Guardia Act (Act of March 13, 1932, Ch. 90, Sec. 7, 47 Stat. 71) did not prohibit the District Court from extending the temporary restraining order after such order had been in force five days.
- 2. Whether the pleadings and proof do not show absence of a federal question and lack of jurisdiction of the subject matter or that the case did not arise under the Constitution and Laws of the United States.

- 3. Whether there is substantial evidence that public officers were unable or unwilling to furnish adequate protection for plaintiff's property, which evidence is a condition precedent to a labor injunction by the terms of Section 7 (e) of the Norris-La Guardia Act (Act of March 23, 1932, ch. 90, Sec. 7, 47 Stat. 71).
- 4. Whether the facts show that plaintiff failed to exercise reasonable efforts to settle the dispute with the aid of governmental machinery as required by Sec. 8 of the Norris-La Guardia Act (Act of March 23, 1932, Ch. 90, Sec. 8, 47 Stat. 72), preliminary to an injunction in a labor dispute.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

- (1) The Circuit Court of Appeals has decided the important question of jurisdiction of the subject matter contrary to applicable decisions of this Court. The majority opinion adopts a new rule without congressional sanction and is such a departure from the accepted rule of jurisdiction that it greatly expands the province of federal courts over local affairs.
- (2) The Circuit Court of Appeals has construed important provisions of the Norris-La Guardia Act in a manner which apparently unsettles the clear intent of these provisions. This act has frequent application to a current field of litigation and the provisions in question have not yet been passed on by this Court.
- (3) The lower courts have made findings of fact which are unsupported by substantial evidence.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on the docket, No. 7951, Toledo, Peoria & Western Railroad, Plaintiff-Appellee, v. The Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al., Defendants-Appellants, and that the said judgment of the United States Circuit Court of Appeals for the Seventh Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al.,

By JOHN E. CASSIDY, LOUIS F. KNOBLOCK, JOHN F. SLOAN, JR., Attorneys for Petitioners.

BRIEF

In Support of Petition for Writ of Certiorari.

OPINIONS OF THE COURTS BELOW.

The opinion of the District Court is not officially reported. The record, however, contains the oral announcement of the trial judge when the writ was granted. The opinion of the Seventh Circuit Court of Appeals was filed December 16, 1942, No. 7951. Petition for rehearing was denied January 13, 1943 (R. 1038). It is reported in 132 Fed. (2d) 265 and set forth in full at page 1020 of the record.

JURISDICTION.

The statutory provision sustaining the jurisdiction of this Court to review the judgment of the Circuit Court of Appeals is Section 240 (a) of the Judicial Code as amended by Act of February 15, 1925, Chapter 229, Section I, 43 Stat. 938 (U. S. C. A., Title 28, Sec. 347).

STATEMENT OF THE CASE.

Petitioners believe the recital of facts contained in the "Summary Statement" in the accompanying petition for writ of certiorari constitutes a sufficient statement to serve this Court in its consideration of this brief. The same is, therefore, hereby adopted and made a part hereof.

SPECIFICATION OF ERRORS.

- (1) The lower courts erred by permitting an extension of the temporary restraining order beyond five days because Section 7 of the Norris-La Guardia Act declares that such an order "shall be effective for no longer than 5 days and shall become void at the expiration of said 5 days."
- (2) The District and Appeals Courts erred by deciding that the controversy presented a federal question and by holding jurisdiction of the subject matter.
- (3) The evidence did not show that public officers were unable or unwilling to furnish adequate protection for plaintiff's property. Section 7 (a) of the Norris-La Guardia Act requires such a showing as a condition precedent to an injunction and the lower courts erred in their refusal to dismiss the complaint on this ground.
- (4) The law (Norris-La Guardia Act, Sec. 8) prohibits injunctive relief in a labor dispute to any complainant who has failed to make every reasonable effort to settle such dispute with the aid of governmental machinery. Plaintiff admits its refusal to comply with the request of the National Mediation Board for voluntary arbitration. The District and Appeals Courts erred by awarding the injunction under these circumstances.

ARGUMENT.

SUMMARY.

I. The temporary restraining order was issued January 3, 1942. Section 7 of the Norris-La Guardia. Act clearly states that this order was effective "FOR NO LONGER THAN FIVE DAYS AND VOID AT THE EXPIRATION OF FIVE DAYS." On January 8, 1942, the District Court (R. 66) ordered an extension of the same order for a period of nine days, and on January 16, 1942, the Court again ordered (R. 965) that the order of January 3, 1942, should be extended for a period of three additional days. The clear language of the statute prohibits these extensions, and the Circuit Court of Appeals should have decided that the orders were void.

II. Neither the complaint nor evidence demonstrates that a decision of this controversy requires the application or construction of the Constitution or any law of the United States. For this reason the suit should have been dismissed for lack of federal jurisdiction of the subject matter. The Appeals Court expressly concedes the long-established rule, but holds (R. 26) that because the Interstate Commerce Act imposes certain duties on a common carrier that a federal court has jurisdiction to restrain third parties not regulated by the Commerce Act (striking employees) from interfering with the performance of such duties by the carrier. But the opinion of the Circuit Court of Appeals declares: "The Interstate Commerce Act includes no specific provision as to restraint of violent strikes against a carrier engaged in interstate commerce at the suit of the carrier" (R. 1024). By its own language the opinion admits a lack of legislative foundation for the injunction and the absence of a federal law as a basis for jurisdiction. The

opinion announces a new doctrine of enlarged jurisdiction for injunctions and other common-law remedies without congressional sanction, and should not be allowed to stand.

III. Section 7 of the Norris-La Guardia Act requires a finding that public officers are unwilling or unable to protect property as a condition precedent to an injunction. Under Illinois law the same finding would be sufficient to remove a sheriff from office and to impugn the sovereign competency of the state. The Sheriff has the power to deputize practically all adult citizens and the Governor has the duty to employ the militia. There is no evidence the Governor was requested to act in this controversy. There were but 104 men on strike. Plaintiff had twenty-nine armed guards, and the evidence fails to show that local officers were unable or unwilling to perform their duty to protect property.

IV. The strike was provoked by plaintiff's declaration of December 21, 1941, that its own rates of pay and working conditions would go into effect December 29th. Plaintiff knew these conditions were unacceptable to the men. The employees were then at work and no strike order was pending. The employees had agreed on December 17th to submit to voluntary arbitration at the request of the National Mediation Board. They repeated their willingness to do this on December 28th. The nation was then at war and a national emergency existed. The employer refused these same requests for arbitration which would have prevented the strike. Section 8 of the Norris-La Guardia Act prohibits an injunction when the evidence shows that a complainant has failed to exercise reasonable efforts to settle the dispute by arbitration. By the law and this evidence the injunction was prohibited and should have been denied.

I.

The statutory language that "such temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of five days" is so clear there is no doubtful meaning for construction and the orders of the District Court (R. 66, 965) extending the restraining orders for an additional eleven days were void. The Circuit Court of Appeals held (R. 1022) that the purpose (of this part of the statute) was "to prevent possibility of irreparable damage and to preserve the existing status until an early hearing would determine whether or not a temporary injunction should be issued." There is nothing in the act to sustain this finding and the Court's conclusion amounts to a reading of new language into the act.

This Court stated, in United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234:

"Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it."

The Congress said the restraining order was void at the end of five days and the act provides no qualification or exception. If a District Court can make one extension for some purpose, it can make twenty extensions or more for any or all purposes. The act prescribed a rigid limitation and imposed an inflexible necessity on the complainant and the Court to complete the hearing for temporary injunction within five days, if it desired that there be an injunction from the expiration of the restraining order.

The basic purpose of the Norris-LaGuardia Act is to exclude injunctive relief by federal courts in labor disputes

except in the most extraordinary and extreme situations. A showing for temporary injunction does not require repetitious evidence. A prima facie case is sufficient. If the Court can extend the restraining order in all cases until a hearing for an injunction is completed and is not limited as to the length of the hearing, the statutory five days limitation for the restraining order is subject to judicial nullification. The Court of Appeals also held that if the temporary injunction in this case was proper that the restraining order merged in the injunction and the restraining order was not before that Court. To sustain that view the Court cited City of Reno v. Sierra Pacific Power Co., 44 Fed. (2d) 281, 283 (C. C. A. 9). That case is for injunctive relief to enjoin a municipality from interfering with water meters. It does not embrace a labor dispute and is not limited by the Norris-LaGuardia Act. A reading of the opinion will disclose additional distinctions, but this is sufficient that the decision is not pertinent to this case at bar.

This section of the Norris-La Guardia Act has not been passed on by this Court. If the restraining order was void between January 8 and January 19, 1942, it will not sustain contempt proceedings that may be brought because of alleged occurrences during that period. The issue is alive and should be determined by this Court.

II.

Diversity of citizenship is not in this case and a United States court is without jurisdiction unless a federal question is presented by the complaint and evidence. The test for determining the existence of a federal question and consequent jurisdiction as pointed out in the dissenting opinion (R. 1023) has been settled since the opinion of Chief Justice Marshall in Cohen v. Virginia, 6 Wheat. 263, 279, 5 L. ed. 257, 285. The rule has recently been restated

in Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942), in which this Court said:

"Whether a suit arises under a law of the United-States must appear from the plaintiff's pleading, not the defenses which may be interposed to or be anticipated by it. Petitioner's pleading, which we have summarized, satisfies this requirement since it adequately discloses a present controversy dependent for its outcome upon the construction of a Federal statute."

The majority opinion in this case (7th C. C. A.) (R. 1023) concedes the rule in the following language:

"To give rise to Federal Jurisdiction, the basis of the suit must be concerned with the validity; construction, enforcement or effect of the statute; anything less is insufficient."

The authorities (decisions of this Court) to which reference is made in the dissenting opinion, particularly Gully v. First National Bank, 299 U. S. 109, 112, 114, 57 S. Ct. 96, 81 L. Ed. 60, 72 (opinion by Justice Cardozo), clearly explain that a suit does not arise under the laws of the United States with consequent jurisdiction in a federal court unless it "really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends," and that "the federal nature of the right to be established is decisive—not the source of the authority to establish it."

In this case plaintiff bases its claim for federal jurisdiction upon the theory (alleged in complaint, R. 3, 28) that because interstate commerce is involved and the Federal Constitution authorizes Congress to legislate in that field and because Congress has passed an act to regulate com-

merce and has enacted the Railway Labor Act and a federal statute called "War Utilities" a federal question is created in this labor dispute.

The complaint does no more than aver a general reference to the statutes. It does not specify any provision or attempt to charge how the construction or effect of the Interstate. Commerce Act or other federal law is necessary to decide whether striking employees of plaintiff should be restrained. We contend that under the rule repeatedly announced by this Court and well stated in Norton v. Whiteside, 239 U. S. 144, 147, 36 S. Ct. 97, 60 L. ed. 186, 187, that the complaint is insufficient to support the action and the suit should have been dismissed by the District Court on the pleading or, better stated, that a dismissal should have been granted because the complaint disclosed a clear absence of a federal question and lack of jurisdiction.

The majority opinion (C. C. A.) affirmed jurisdiction of the subject matter because it conceived that determination for an injunction against striking employees required the construction and enforcement of some provisions of the Interstate Commerce Act. The opinion acknowledges that because "Congress has power to legislate in certain fields is insufficient to confer jurisdiction" and that "the mere fact that interstate commerce is involved and may be affected is not sufficient to justify jurisdiction of a private suit seeking protection of such commerce," and the opinion points out that "the commerce Act includes no specific provision as to restraint of violent strikes against an Interstate carrier at the suit of the carrier." However. the appeals court sustained jurisdiction because the Commerce Act requires a carrier to provide reasonable and safe facilities and prohibits abandonment of all or any part of a road without authority of the Commerce Commission and because a federal statute provides criminal liability for one who derails a car or destroys a facility, etc., used in interstate commerce. The conclusion of the Court in behalf of jurisdiction is thus stated (R. 1026):

"It cannot be that Congress imposed duties and yet intended that the carrier should be denied Federal relief from interference with carrying out such duties. Congress having set up certain requirements which the carrier must meet when others seeking to prevent it by violence from meeting those statutory obligations it should be permitted to seek protection in a Court of equity of the sovereignity imposing the obligation."

A decision for this injunction does not require a construction or enforcement of the mentioned criminal statute and plaintiff's right to be free from violent interference by striking employees in the conduct of its business does not spring from any provision of the Interstate Commerce Act. Neither the Interstate Commerce Commission, a shipper or anyone is complaining in this case that plaintiff did not perform its duties specified by that act or is anyone charging that plaintiff abandoned any part of its road.

We suggest that the majority opinion confuses plaintiff's common law right to be free from violent interference with its statutory duties prescribed by the regulatory commerce act. The complaint here is by the carrier itself and the charge is that plaintiff has a right to be free from interference by its striking employees in the performance of its business. Plaintiff is complaining about that common law right. No one is charging it with failure to perform duties under the commerce act. The right of plaintiff and every owner of property to be free from violent interference existed before the Commerce Act was passed. That statute did not enlarge or federalize the right, neither did the Commerce Act originally create plaintiff's natural right to engage in business. The statute was designed to regulate the carrier for the larger good of the public.

It was not the intention of Congress through the Interstate Commerce Act to regulate third parties (striking employees), but only the carriers themselves. Neither did Congress propose through this statute to regulate or solve labor disputes. The history of the act shows it was passed to curb railroad practices which were affecting the general welfare. In review of the events which lead to the law this Court stated in Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944:

"From the very nature of the case, therefore, railroads are monopolies, and the evils that usually accompany monopolies soon began to show themselves, and were the cause of loud complaints. The companies owning the railroads were charged, and sometimes truthfully, with making unjust discrimination between shippers and localities, with making secret agreements with some to the detriment of other patrons, and with making pools or combinations with the other, leading to the oppression of entire communities . . .

"As, however, the powers of the states were restricted to their own territories, and did not enable them to efficiently control the management of great corporations whose roads extended through the entire country, there was a general demand that Congress, in the exercise of its plenary power over the subject of foreign and interstate commerce, should deal with the evils complained of by a general enactment, and the statute in question was the result."

When the Congress passed the Commerce Act it had a right to and did assume that the states would continue to enforce elementary police powers for the protection of all property, whether the property was used in interstate business or otherwise. Whether Congress should provide for injunctive relief against striking employees at the suit of a carrier because the Commerce Act regulates carriers for the benefit of shippers and the public is not a question for the Court, but instead a subject for legislative deter-

mination. The controlling fact is that Congress has not so legislated, and in the absence of such legislation an interstate carrier has no greater or different rights to be free from interference by its striking employees than those enjoyed by any other citizen. The right of this plaintiff to have its property protected against violence from striking employees is not of federal origin or nature, but is a right uniformly enjoyed by all citizens, irrespective of the character of their business.

A right such as contended for by plaintiff in this case not having its origin or grant in a federal law, is for enforcement by state courts and one over which federal courts are without jurisdiction.

The majority opinion (C. C., A.) cites In re Lennon, 166 U. S. 548, to support jurisdiction. That case was decided in April, 1897. It was a habeas corpus proceeding which emanated from an injunction granted by the Circuit Court in Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. It was an action instituted by plaintiff, an interstate carrier, against eight railroad companies and a labor union constituted of employees of one of the defendant carriers. The complaint charged that defendants and the employees of one defendant refused to accept freight from plaintiff and that defendants were accordingly violating the duty imposed on them by the second paragraph of Section 3 of the Interstate Commerce Act, which provides that all common carriers shall afford reasonable and equal facilities for the interchange of traffic. Plaintiff prayed for a mandatory writ requiring defendant carriers to perform this duty imposed by the Commerce Act and the prayer was allowed.

This decision was almost a half century before the Norris-La Guardia Act, which prohibits an injunction to compel employees to work under any circumstances, Norris-La Guardia Act, March 23, 1932, Ch. 90, Sec. 4, Subparagraph (a), 47 Stat. 70. Moreover, it is completely different from this case at bar because it is bottomed on the statutory violation by the defendants in refusing to accept interstate freight. The complainant there was the proprietor of a clear statutory right to have its freight accepted by the connecting carriers and the defendant railroads had a statutory duty to accept it. The purpose of that suit was to force acceptance of freight. The purpose of the present action is to forbid striking employees from interference with plaintiff's property. On page 553 of the opinion written by former Justice Brown of this court, the Court said:

"There could be no doubt of the power of the Court to grant this injunction which bore solely upon the relations of the railway companies to each other."

We desire to briefly demonstrate the factual differences between other cases cited in the majority opinion (C. C. A.).

In Wabash Co. v. Hanahan, 121 Fed. 563, an injunction was sought to restrain officers of a labor union from ordering a strike. The District Judge denied the injunction on the facts. The jurisdictional question was but superficially considered and sustained on authority of Toledo Ry. Co. v. Pennsylvania Co., 54 Fed. 730, explained in one of the preceding paragraphs of this argument.

There are many distinctions between this Hanahan case and the proceedings at bar, but it is sufficient to note that under the prohibition of the Norris-LaGuardia Act (since enacted) such an injunction could not now be allowed to restrain union leaders and employees from striking for a wage increase.

Knudsen v. Benn, 125 Fed. 636, was an oral opinion of a District Judge in a suit to enjoin members of a union not employees of plaintiff from inducing plaintiff's employees to strike. The opinion does not show what the complaint

charged, and the only reference to the question of jurisdiction is this meager statement: "The acts here charged constitute an interference with interstate commerce and I suppose some matters are stated mainly to show that it is a case over which a federal court has jurisdiction." Nor does it appear what are the facts referred to as "some matters."

Stephens v. Ohio State Telephone Co., 240 Fed. 759, was a suit by subscribers of a telephone company to compel the company to furnish telephone facilities to them. The Court held it had jurisdiction because the Interstate Commerce Act gave plaintiffs the right to obtain reasonable facilities for telephone service. Since the suit was based on this right granted by a federal statute, it arose under the laws of the United States.

In King v. McLean Asylum of Massachusetts General Hospital, 64. Fed. 331, jurisdiction was based on diversity of citizenship. There was no question of jurisdiction involved.

Richards v. Town of Rock Rapids, 31 Fed. 505, raises the validity of a tax assessment on National Bank shares. The federal jurisdiction was based on Section 5211 of the Revised Statutes of the United States, which prohibited discriminatory taxation against such shares. It was claimed that the tax violated the right given by that federal law.

In Iowa Loan & Trust Co. v. Fairweather, 252 Fed. 605, plaintiff sought to resist the imposition of a state tax upon Liberty bonds. The Act of Congress providing for the issuance of such bonds declared that they should be exempt from all taxation. It was held that a federal question was involved because plaintiff's case was based on this right to be free from taxation granted him by federal statute.

Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198, was an injunction suit against the Attorney-General of Arizona to restrain the enforcement of the State Train Limit Law on

the grounds that the state law was in violation of the Constitution of the United States.

In Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567, after a hearing by the parties before the Interstate Commerce Commission, the defendant refused to comply with the order of the Commission directing the defendant to receive traffic from plaintiff. Suit was filed in the federal court to force compliance with the Commission's order. Such a suit in the District Court is specifically provided for in Section 16 (12) of the Interstate Commerce Act.

Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957, was a suit by a railroad to restrain the Oregon State Board of Commissioners from putting into operation and effect a schedule of freight rates on plaintiff's railroad in the state. It was charged by the railroad that the schedule was confiscatory and deprived plaintiff of its property without due process of law in violation of the Fourteenth Amendment to the Constitution.

Glenwood Light etc. Co. v. Mutual Light etc. Co., 239 U. S. 121, 60 L. ed. 174, 36 Sup. Ct. 32, was a suit brought by one public utility to restrain another utility from maintaining its poles and wires on the same side of the street as plaintiff. Plaintiff and defendant were citizens of different states and federal jurisdiction was invoked on that ground. The only question in the case was whether or not the amount in controversy was in excess of \$3,000.00.

Carmichael v. Anderson, 14 Fed. (2d) 166, was a suit by the holder of one federal radio license against the holder of another license to broadcast on the same wave length. It was held that the controversy involved an interpretation of the federal licenses and the federal statute under which they were granted. In so doing, the case involved a federal question.

The expansion of federal jurisdiction that would result from the rule announced in the majority opinion (C. C. A.) demonstrates the wisdom of the established jurisdictional test so frequently stated by this Court. Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909; Louisville & Nashville R. Co. v. Mottley, 211 U. S. 149, 152, 29 S. Ct. 42, 53 L. ed. 126, 127.

According to the Circuit Court of Appeals, if a federal statute imposes a duty upon a person, judicial interpretation may read into that statute a provision that such a person has an implied federal right to be free from any act tending to obstruct or prevent the performance of that duty, and a federal court will hear cases seeking remedies for a breach of such an implied right. We suggest the vast number of duties imposed on various classes of persons by the laws of the United States. The official 1940 edition of the U. S. Code covers 4,500 large pages of fine type.

A great volume of litigation in state courts comes from automobile negligence cases. Federal law imposes upon common carriers by truck the duty to furnish transportation and facilities (Part II of the Interstate Commerce Act, Section 16, Act of June 29th, 1938, ch. 811, Sec. 16, 52 Stat. 1240, U. S. C., Title 49, Sec. 316). Assume a motorist damages a truck, thereby impeding interstate commerce. Under the reasoning of the Circuit Court of Appeals the trucker would have a federal right to be free from any act obstructing or impeding the movement of the truck, and a remedy in the federal courts for his damage.

All other interstate carriers have similar duties: Water carriers (Part III of the Interstate Commerce Act, Sec. 305, Act of Sept. 18, 1940, ch. 722, Title II, Sec. 201, 54 Stat. 934, U. S. C., Title 49, Sec. 905); telegraph companies (Act of Aug. 7, 1888, Ch. 772, Sec. 2, 25 Stat. 383, U. S. C., Title 47, Sec. 10); telephone, telegraph and radio companies (Communications Act of 1934, Sec. 201, Act of June 19, 1934, Ch. 652, Sec. 201, 48 Stat. 1070, U. S. C., Title 47, Sec. 201); air carriers (Civil Aeronautics Act of 1938, Sec.

401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat. 987, U. S. C., Title 49, Sec. 481); power companies (Federal Power Act, Act of June 10, 1920, Ch. 285, Sec. 201, U. S. C., Title 16, Sec. 824); pipe line companies, express companies, sleeping car companies [Interstate Commerce Act, Sec. 1, Act of Feb. 4, 1887, ch. 104, part I, 24 Stat. 319, as amended, U. S. C., Title 49, Sec. 1 (3)]. Under the majority opinion such carriers would have similar implied federal rights and U. S. courts similar jurisdiction.

Interstate commerce has been widened until it now touches nearly all phases of a citizen's life. The Food and Drug Law prescribed federal duties with respect to his food and drugs. Packers and stockyards have federally imposed duties. Security exchanges are subject to federal law as are public utility holding companies, investment companies and investment advisers. Other millions have duties imposed upon them by federal law. Following the reasoning of the Circuit Court of Appeals, each of such duties would create corresponding federal rights that could be enforced in federal courts. This was never intended by Congress.

III.

The evidence is insufficient to show that the public officials were unable or unwilling to furnish adequate protection for plaintiff's property as required by Section 7 of the Norris-La Guardia Act.

This section (Act of Mar. 23, 1932, Ch. 90, § 7, 47 Stat. 71) provides in part:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute . . . except after findings of fact by the court to the effect—

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Plaintiff's evidence relates to incidents of disturbance and violence on December 28th, 29th, 30th, 31st and January 1st and 2nd, practically all of which occurred in Illinois and adjoining counties of Peoria and Tazewell. There were but 104 men on strike (R. 760) on a railroad which extended from Indiana to Iowa. Plaintiff had twenty-nine armed guards (R. 784), who rode its trains; so there was one armed guard for every 3.5 strikers. There were but two arrests and no request for additional arrests (R. 393).

The Tazewell Sheriff posted deputies for 24-hour duty at the lane where the picketing was conducted (R. 724). The . damage to plaintiff's property amounted to broken glass in the headlights and cabs of locomotives, the lamps of switches and cabooses. Although the Sheriffs of Peoria and . Tazewell cautioned plaintiff's president that their staffs were limited, there is no evidence that either Sheriff did not act for the suppression of violence and preservation of order. There was only one specific request to the Peoria Sheriff (R. 382). On January 2nd, the day before the complaint was filed in court, plaintiff's president, Mr. McNear, dispatched telegrams to the mayors of cities and sheriffs of Central Illinois Counties requesting these officials to furnish officers to ride upon and convoy trains through their respective jurisdictions (R. 734). The officials who replied assured they would protect plaintiff's property but said they were not in a position to furnish deputies to ride the trains (R. 735).

There is no evidence that police officers and sheriffs were unable to handle any disturbance or situation to which their attention was called or which came to their notice. There is no evidence that the Governor was requested to act because of violence or disturbance. In fact, there is no proof that the chief executive of the state was notified. Under our form of government a sovereign state such as Illinois, has the clear duty and unfettered power to protect the property of all its citizens, whether they are engaged in interstate transportation or any other business. The federal government was not designed or empowered to enforce local rights for the protection of property.

In Arkansas v. Kansas T. & T. Co., 183 U. S. 185, 188, 46 L. Ed. 144, 146, which was an injunction suit, this Court, speaking through former Chief Justice Fuller, said:

"The police power was appealed to, the power to protect life, liberty, and property, to conserve the public health and good order, which always belonged to the states, and was not surrendered to the general government, or directly restrained by the Constitution."

Illinois counties are subdivisions of the sovereign state. They were created by the people for the administration of state law. Each county has a sheriff who is "the principal executive officer of the county and may exercise the powers of the sheriff at common law." The People v. Nellis, 249 Ill. 12, p. 23 (decision of Illinois' highest court). statutes of this state provide: "Any sheriff may call to his aid, when necessary, any person, or the power of the County" (Smith-Hurd Illinois Rev. Stat., Ch. 125, Sec. 18). Cities and villages of the state are likewise subdivisions of the sovereignty and they exist for the purpose of administering law for the common welfare. The Mayor of every Illinois city by statute "has the power to call on every male inhabitant of the city over the age of 18 years to aid in enforcing laws and ordinances" (Smith-Hurd Ill. Rev. Stat., Ch. 24, Sec. 9, City and Villages Act). The statutes of this state also provide that when a public official such as a sheriff or mayor refuses to perform his

official duty he may be removed from office (Smith-Hurd Ill. Rev. Stat., Ch. 38, Sec. 449, Criminal Code).

The provision of the Norris-La Guardia Act that an injunction shall not be granted unless it is proved that the public officers are unable or unwilling to furnish adequate protection for complainant's property firmly denies federal jurisdiction for injunctive relief in a labor dispute, until it clearly appears that regularly constituted state officials. including the Governor, are proved unable or unwilling to perform their constitutional and lawful duties. Such a finding requires that such officials have refused, which amounts to an offense on the part of such officials under state law, or that they are unable to provide sufficient protection. There is no showing in this record that any public official of Illinois refused to perform such duties. The legal machinery available to sheriffs and mayors for the preservation of order, together with the constitutional power of the Governor to employ the militia, makes it manifest there was no inability of the public officials to furnish adequate protection for plaintiff's property. The fact that the respective sheriffs did not accede to the request of plaintiff's president to furnish deputies to ride or convoy the railroad trains does not constitute a legal test of the officers' unwillingness or inability to perform their duty. Neither does the fact that some violence occurred, including personal assaults between individuals out of the presence of these officers, show their refusal or inability to furnish adequate protection. Public officials and peace officers are not guarantors against commission of crime or the occurrence of violence, and the mere fact that disturbances occur does not prove such inability or unwillingness.

If the Sheriffs and the City and State officials of Illinois were incompetent or unwilling to protect complainant's property because of 104 striking employees, the property of other Illinois citizens is in peril, but this is not the

case, and the evidence in this record fails to disclose such a breakdown of local and state government.

We suggest it would be salutary for this highest Court of the nation to say that local and state officials may not shift their constitutional duties to a federal court without making a confession of their incompetency.

IV.

Section 8 of the Norris-La Guardia Act denies injunctive relief to any plaintiff who has failed (1) to comply with any obligation imposed by law, or (2) to make every reasonable effort to settle the dispute either by negotiation or with the aid of governmental machinery of mediation or arbitration. The lower courts have erroneously construed this section and improperly found that the evidence showed it had been complied with.

This section (Act of Mar. 23, 1932, Ch. 90, Sec. 8, 47 Stat. 72) provides:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

The pertinent facts under this point are undisputed. Prior to October, 1940, plaintiff's employees were members of a company union. Then the two railroad brotherhoods became the employees accredited representatives under the terms of the Railway Labor Act. Negotiations for an agreement about pay and working conditions were not successful. The Brotherhoods called a strike for December 9, 1941, which was indefinitely postponed after the attack on Pearl Harbor and declaration of war. On December

17th and again on December 28th an agency of the United States Government, i. e., National Mediation Board, requested both sides to submit to arbitration. The employees agreed, but plaintiff railroad refused. In the District Court plaintiff's attorney Sprague testified (R. 789): "We did refuse to arbitrate in December, as I have already testified, and we have not changed our position in that respect."

On December 21st, when no strike order was in effect, the railroad served notice on the men that its own rates of pay and working conditions would go into effect December 29th. Upon receiving such notice the Brotherhoods had the alternative of yielding to the railroad's demands or withdrawing from service. The strike was a direct result of plaintiff's enforcement of its own demands and its refusal to comply with the request of the government agency for voluntary arbitration. The employees were still working and there was no violence when plaintiff refused to arbitrate at the request of the Mediation Board on December 17th and December 28th. There is no evidence of threats of violence at that time.

The majority opinion (C. C. A.) holds that a complainant fulfills this provision of the Norris-La Guardia Act if it either mediates or negotiates or arbitrates. The opinion also points out that the Railway Labor Act specifies that refusal to arbitrate "shall not be construed as a violation of any legal obligation." The Appeals Court construes this part of the Labor Act to mean that arbitration is not a condition precedent to securing an injunction. The applicable section 8 of the Norris-La Guardia Act prohibits an injunction to a complainant who has failed to comply with any obligation imposed by law or to make every reasonable effort to settle the dispute either by negotiation or with the aid of any governmental machinery for mediation or voluntary arbitration.

It is suggested that the plain meaning of the statute does not sustain the distinction or construction of the majority opinion. The clear intent of Congress was to induce settlement without resort to the courts and adjustment without work stoppages. As pointed out in the dissenting opinion, if plaintiff had submitted to the request for arbitration the strike would have been avoided.

It must be presumed that a governmental agency would be fair, just and impartial in the conduct of the arbitration. Plaintiff offered no explanation or justification for its inflexible refusal to respond to the Government's request and its refusal was made at a time when the nation was at war. We do not contend that the railroad here was under legal compulsion to submit to arbitration, but we do say that when a complainant does an act which provokes a strike (giving notice that its own working conditions would be effective December 29th), and, in addition, stubbornly refuses the requested co-operation of the Government when such refusal is not explained, such a complainant is not in such a state of equity to justify equitable relief in its behalf by a federal court, and in these circumstances that an injunction is forbidden by the Norris-La Guardia Act.

Respectfully submitted,

JOHN E. CASSIDY, LOUIS F. KNOBLOCK, JOHN F. SLOAN, JR., Attorneys for Petitioners. FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1942.

No. 848 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners,

VS.

TOLEDO, PEORIA & WESTERN RAILROAD, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY TO ANSWER AND BRIEF OF RESPOND-ENT IN OPPOSITION TO WRIT OF CERTIORARI.

JOHN E. CASSIDY, LOUIS F. KNOBLOCK, JOHN F. SLOAN, JR., Attorneys for Petitioners.

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IN THE

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REPLY TO STATEMENT.

The questions presented for the consideration of this Court (Pet. p. 5) do not require a review of the evidence of alleged violence. These questions relate to (1) extension of the restraining order beyond five days, (2) federal jurisdiction of the subject matter, (3) and (4) proof of compliance with two provisions of the Norris-La Guardia-Act. Respondent has, however, insisted on making an extended statement as to purported proof of violence and, in

addition, attaching a diagram with "red dots" to show such alleged violence. Lest this statement create an impression of magnitude and extensiveness as to these acts, we wish to point out to the Court that with the exception of one exchange of blows between pickets and a strike-breaker following an automobile accident (R. 82) and an incident where a bottle of inflammable liquid was thrown upon an engine (R. 413), in which defendants insist no striking employee was involved, and several times when rocks were thrown at passing trains (R. 129), the proof of violence consisted practically entirely in testimony by railroad inspectors that at remote places in the company's line they found that glass had been broken in switch lights and that other minor damage had in some unexplained manner occurred to railroad property.

T.

Respondent argues that when notice is given of the extension of the temporary restraining order, the five-day provision of Section 7 of the Norris-La Guardia Act has no application; that the act only applies to extensions made without notice. This argument violates the plain language of the act, which says nothing whatsoever about "extensions" being granted on notice or any other basis. The act specifically says that the original temporary restraining order itself "shall become void at the expiration of said five days." There is no provision made for any extension and a court cannot read into a statute an exception which the Congress did not see fit to include.

II.

In our petition and brief we pointed out that under the decisions of this Court the rule has been established that before a case arises under a law of the United States, the basic substantive right which a plaintiff claims has been violated or is about to be violated, giving rise to his cause

of action, must have its origin or creation in an Act of Congress. Many cases of this Court have expressed this principle in language to the effect that the Act of Congress relied upon must be so fundamentally the basis of the lawsuit that its construction in one manner will allow recovery and in another way will defeat recovery.

Respondent in its brief seeks to bring its cause of action within this language by saving that this case necessarily involves the construction of its rights and duties under the Interstate Commerce Act, the Railway Labor Act, and the Norris-La Guardia Act. But this misses the point. This railroad is seeking to enforce its fundamental substantive right to be free in its business from acts of violence. This respondent admits, but claims it is a federal right. At page 13 of the brief it states: "The right asserted by respondent to be free from violent interference of its business as an interstate carrier is created by the federal Constitution and statutes But, before this right becomes a federal one, it must have its origin in an Act of Congress. There must be in force a federal statute providing that plaintiff has such a right. The Circuit Court of Appeals recognized this necessity by reading the right into the Interstate Commerce Act and holding that because a railroad had certain duties with reference to providing transportation, it had ipso facto the implied federal right to be free from acts of violence hampering it in the performance of those duties. As we have pointed out, there is no basis in any language in the act or in any view of the Congressional intent, to read this federal right into the act.

Nor does the Railway Labor Act create any such right. It says nothing whatsoever about this matter. We are here dealing with the question of the fundamental jurisdiction of the District Court over the subject matter. If this requirement would be satisfied, then the question would arise as to compliance with the special jurisdictional

statute, i. e., Norris-La Guardia Act. Then, and only then, would the Railway Labor Act be involved, and then only to determine if the obligations imposed by it had been complied with as required by the Norris-La Guardia Act and whether it relieved plaintiff of the necessity of arbitrating a dispute in order to comply with the Norris-La Guardia Act. The mere construction of a procedural or jurisdictional statute does not make a federal question. What must be involved is the construction of a statute creating a substantive right. This substantive right must be so fundamentally the basis of plaintiff's right to recovery that its construction one way will defeat the case and, in another way will allow recovery. It could just as logically be argued by respondent that this present jurisdictional point involves the construction of Section 24 of the Judicial Code, and, since a construction of this act in one manner will defeat him and in another will not, a federal question is involved. Similarly, it could be argued that when any other procedural or jurisdictional statute was seriously involved in a case, a federal question was involved. But this is clearly contrary to the principle that a case "arises under the laws of the United States" only. when the right sought to be asserted as the substantive basis of the merits of the case, was created by an Act of Congress.

Respondent argues that it was held in Texas & N. D. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, and in Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592, that federal courts have jurisdiction to entertain suits by the employee to enjoin the employer and therefore the employer should have a right here. Those cases were brought to force the employer to recognize a union as the employee's bargaining agent, as the Railway Labor Act specifically required it to do. No question of jurisdiction was involved or discussed. They certainly do not stand for the proposition urged by respondent.

Respondent states in its brief (p. 28): "A careful analysis of the issues in instant case will demonstrate that the fundamental principle in this case and in the Lennon case is exactly the same." As we have pointed out, this case (Ex parte Lennon, 166 U. S. 548, 67 S. Ct. 658) was in its original form a suit by one railroad against other railroads to force the defendants to interchange freight. The Interstate Commerce Act specifically provided that the plaintiff had the express right to have freight interchanged, a thing which the defendants were refusing to do. This Court held that the case arose under a law of the United States, i. e., the statute which created the right of plaintiff to have its freight accepted. In the Lennon case the right. asserted by plaintiff to have its freight interchanged was expressly created by the Interstate Commerce Act. But where is the federal statute that respondent says creates its right "to be free from violent interference with its business"! None has been pointed out, and none can be. pointed out. The right exists by virtue of the common law of the State of Illinois, and not by federal statute. Consequently the case does not "arise under the laws of the United States."

The case of Southern Pacific Co. v. Peterson, 43 F. (2d) 198, quoted from on page 30 of the brief, was a suit to enjoin the Attorney General of Arizona from enforcing the state train, length limit law on the ground that it was unconstitutional. The question at issue here was not involved.

Respondent cites Sharp v. Barnhart, 117 F. (2d) 604, as being an answer to our argument that if the reasoning of the Circuit Court of Appeals is followed motor common carriers which have the same duties with reference to furnishing transportation as railroads will have the same implied federal right to be free from any act tending to obstruct or hamper them in such transportation, which right may be enforced in federal courts. In the case cited suit was brought to recover damages for the seizure of an interstate truck and its cargo. Certainly such act of

seizure was an interference with interstate commerce. Yet the Court stated at page 606:

"We are convinced that the District Court correctly dismissed the suits for want of jurisdiction."

This, we submit; is in accord with our position here. The present case, too, should have been dismissed for want of jurisdiction.

III.

Respondent argues that because the evidence showed numerous acts of violence had occurred that this shows the public officers were unable or unwilling to protect their property. As we have pointed out the "fifty separate instances" of alleged violence are largely made up of the sort of testimony by employees of respondent that they had found cracked glass in switch lights, etc., with no proof of how the condition occurred, and there were actually only several occasions when real violence occurred. Nor is this argument warranted in its conclusion that because violence existed the public officials have been unable or unwilling to protect plaintiff's property. The only persons who were asked to give any protection were the Sheriffs of Peoria and Tazewell counties and the city police of East Peoria. It is true plaintiff notified a number of other sheriffs, city police and mayors on January 2nd. This was only the day before the injunction complaint was filed. Without doubt it was an attempt to create the evidence required by the act and was too soon before the restraining order to be any evidence of the failure of these officials to furnish protection.

As we have pointed out in our brief, protection was furnished by those officials asked and arrests were made in all instances when requested.

In our brief we pointed out that no complaint was made to the Governor and no request was made that the state

police or state militia furnish protection. This protection was available on the order of the Governor, but no request for it was made. Respondent attempts to reply by stating that the Governor is not a "public official," and cites Newton v. Laclede Steel Co., 80 Fed. (2d) 636, as so holding. That the Court did not even pass on this question is shown by its statement in the opinion at page 638:

"No issue was made in the brief of lack of showing of the Governor's inability to protect Laclede's property."

The Governor, elected by the people, is certainly not a private official, but rather is a public official.

IV

Respondent now argues that it has complied with Section 8 of the Norris-La Guardia Act, in that it has actually made every reasonable effort to settle the dispute. This is contrary to the position taken by them in the District Court, where they contended that they had the one alternative under this section of complying with the obligations imposed by law or the other alternative of making every reasonable effort to settle such dispute. The findings of Fact' made by the Court merely found that the railroad had complied with the obligation imposed on it by law [Par. (d)] (R. 970). At no place did the District Court ever find that it had made every reasonable effort to settle the dispute. In fact the District Court held otherwise in his oral opinion, stating at record, page 955:

"Gentlemen, I think you men as lawyers know there isn't any way the Government of the United States could pass a law compelling arbitration in a case of this sort. I don't think that would be constitutional. It might be the proper thing to do to arbitrate this cause. As far as the Court is concerned and knows, it would be the proper thing to do, but I can't compel that sort of thing."

Thus the record shows that the District Court found that the proper and reasonable thing for the railroad to have done to settle the dispute would have been to arbitrate it. The Circuit Court of Appeals in its opinion makes a statement somewhat to the contrary. But this it had no authority to do, since such findings in a District Court are not subject to revision at the instance of an appellee who has not prosecuted a cross appeal (Morley Construction Co. v. Maryland C. Co., 300 U. S. 185, 81 L. ed. 593, 57 S. Ct. 325). And the District Court could not have held otherwise with the evidence in this record showing that the railroad deliberately provoked this strike shortly after war began, in order to make the employees accept their terms or take the consequences of an aroused public feeling against strikes.

The holdings of the cases cited by respondent and in the opinion of the Circuit Court of Appeals here to the effect that this section has no application where violence is involved are unsupported by any language of the act or by sound logic. In the present state of the law workmen and labor unions have the right in the furtherance of their labor cause to do nearly any act with the exception of violence. Consequently about the only time an employer could or would come into court for an injunction would be when violence had occurred. But if this section has no application when violence is involved, it means practically nothing. This was never intended by Congress.

Respectfully submitted,

JOHN E. CASSIDY, LOUIS F. KNOBLOCK, JOHN F. SLOAN, JR.,_ Attorneys for Petitioners. FILE COPY

Office - Sources Court, U. S.

SEP-22 1013

CHARLES ELIWRE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

No. 848.

98

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners.

VS.

TOLEDO, PEORIA & WESTERN RAILROAD, Respondents.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Seventh Circuit.

BRIEF OF PETITIONERS.

JOHN E. CASSIDY,
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1941), 155 S. W. (2d) 113. 19, 2 New Mexico Motor Corporation v. Bliss, 27 N. M. 304, 201 P. 105. 1 Norman v. Hess (Sup. Ct. of Mo.), 231 S. W. 997. 1 Norton v. Whiteside, 239 U. S. 144, 147, 36 S. Ct. 97, 60 L. ed. 186, 187. 2 Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942) 2 Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. 2 Richards v. Town of Rock Rapids, 31 Fed. 505. 2 Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198. 2 Stephens v. Ohio State Telephone Co., 240 Fed. 759. 2 Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944 2 The People v. Nellis, 249 Ill. 12, p. 23. 3 Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. 26, 2 Tolman Laundry v. Walker (Md.), 187 Atl. 836. 1 United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234. 2 Wabash Co. v. Hanahan, 121 Fed. 563. 2 Wabash Co. v. Hanahan, 121 Fed. 563. 3 Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819. 1 Statutes Cited. Interstate Commerce Act: Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.			1.4
New Mexico Motor Corporation v. Bliss, 27 N. M. 304, 201 P. 105			00
Norman v. Hess (Sup. Ct. of Mo.), 231 S. W. 997			20
Norman v. Hess (Sup. Ct. of Mo.), 231 S. W. 997. Norton v. Whiteside, 239 U. S. 144, 147, 36 S. Ct. 97, 60 L. ed. 186, 187. Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942). Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. Richards v. Town of Rock Rapids, 31 Fed. 505		New Mexico Motor Corporation v. Bliss, 27 N. M. 304,	18
Norton v. Whiteside, 239 U. S. 144, 147, 36 S. Ct. 97, 60 L. ed. 186, 187. Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942) Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. Richards v. Town of Rock Rapids, 31 Fed. 505. Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198. Stephens v. Ohio State Telephone Co., 240 Fed. 759. Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944 The People v. Nellis, 249 Ill. 12, p. 23. Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. Tolman Laundry v. Walker (Md.), 187 Atl. 836. United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234. Wabash Co. v. Hanahan, 121 Fed. 563. Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819. Statutes Cited. Interstate Commerce Act: Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.		17 17 (6) 61 6 1 204 (4 117	
Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957 Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942) Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. Richards v. Town of Rock Rapids, 31 Fed. 505. Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198. Stephens v. Ohio State Telephone Co., 240 Fed. 759. Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944. The People v. Nellis, 249 Ill. 12, p. 23. Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. Tolman Laundry v. Walker (Md.), 187 Atl. 836. United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234. Wabash Co. v. Hanahan, 121 Fed. 563. Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819. Statutes Cited. Interstate Commerce Act: Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.			15
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353, 86 L. ed. 1525 (decided May 25, 1942) Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. Richards v. Town of Rock Rapids, 31 Fed. 505			-3
Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909. Richards v. Town of Rock Rapids, 31 Fed. 505. Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198. Stephens v. Ohio State Telephone Co., 240 Fed. 759. Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944 The People v. Nellis, 249 Ill. 12, p. 23. Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. Tolman Laundry v. Walker (Md.), 187 Atl. 836. United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234. Wabash Co. v. Hanahan, 121 Fed. 563. Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819. Statutes Cited. Interstate Commerce Act: Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.			
ed. 903, 909 Richards v. Town of Rock Rapids, 31 Fed. 505			20
Richards v. Town of Rock Rapids, 31 Fed. 505			
Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198			30
Stephens v. Ohio State Telephone Co., 240 Fed, 759. 2 Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944 The People v. Nellis, 249 Ill. 12, p. 23			28
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The People v. Nellis, 249 Ill. 12, p. 23			0-
Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730			25
Penn., 54 Fed. 730			33
Tolman Laundry v. Walker (Md.), 187 Atl. 836			0-
United States v. Standard Brewery Co., 251 U. S. 210, 217, 64 L. ed. 229, 234			
217, 64 L. ed. 229, 234			19
Wabash Co. v. Hanahan, 121 Fed. 563			
Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819			20
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Statutes Cited. Interstate Commerce Act: Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.		Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250	
Interstate Commerce Act: ** Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.		N. W. 819	18
Interstate Commerce Act: ** Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.			
Air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.		Statutes Cited.	
Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.		Interstate Commerce Act:	
	*	Air carriers (Civil Aeronautics Act of 1938, Sec. 401,	
		Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat.	4
		987, U. S. C., Title 49, Sec. 481)	31

29th, 1938, ch. 811, Sec. 16, 52 Stat. 1240, U. S. C.,	
Title 49, Sec. 316)	
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companies [Interstate Commerce Act, Sec. 1, Act	
of reb. 4, 1887, ch. 104, part I, 24 Stat. 319, as	*
amended, U. S. C., Title 49, Sec. 1 (3)]	3
Power companies (Federal Power Act, Act of June	O,
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1934, Ch. 652, Sec. 201, 48 Stat. 1070, U. S. C.	
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Water carriers (Part III of the Interstate Commerce	
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II, Sec. 201, 54 Stat. 934, U. S. C., Title 49, Sec.	
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Judicial Code, Sec. 240 (a), as amended by Act of Feb.	
13, 1925, Ch. 229, Sec. I, 43 Stat. 938 (U. S. C. A.,	
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Norris-La Guardia Act (Act of March 13, 1932):	•
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Smith-Hurd Illinois Rev. Statutes:	
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'IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

No. 848.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners,

VS.

TOLEDO, PEORIA & WESTERN RAILROAD, Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF OF PETITIONERS.

OPINIONS OF THE LOWER COURTS.

The Seventh Circuit Court of Appeals' opinion is reported in 132 Fed. (2d) 265 and set forth in the record (R. 4020). No opinion of the District Court is reported, but the oral statement made upon granting the temporary injunction begins at record page 954.

GROUNDS FOR JURISDICTION OF THIS COURT.

Jurisdiction in invoked under Section 240 (a) of the Judicial Code, as amended by Act of February 13, 4925, Chapter 229, Section 1, 43 Stat. 938 (U. S. C. A., Title 28, § 347), providing for review by this Court by certiorari, which was granted April 19, 1943.

STATEMENT OF THE CASE.

This case presents a review of a Seventh Circuit Court of Appeals' judgment affirming an injunction in a labor dispute. There is no diversity of citizenship. The District Court for the Southern District of Illinois restrained striking employees from extensive picketing and violence. The Court of Appeals affirmed through an opinion (132 Fed. [2d] 265) by District Judge Lindley, in which Justice Sparks joined (R. 1020). Circuit Judge Minton filed a dissenting opinion (R. 1032) in which he held lack of a federal question and no jurisdiction, and also that plaintiff railroad failed to meet requirements of the Norris-La-Guardia Act, in that it refused to make reasonable efforts to settle the dispute before the strike and prior to seeking equitable relief in court.

The District Court, issued a temporary restraining order January 3, 1942, without notice on the day the complaint was filed. The order was extended on January 8, 1942, and again on January 16th. After evidence a temporary injunction was issued on January 19, 1942. Contempt proceedings were later brought in the District Court (R. 985-989):

Plaintiff railroad is an Illinois corporation. Its road extends from Indiana to Iowa through Illinois. It had 600 employees (R. 760), but only 104 were conductors, engineers and firemen, who went on strike December 29, 1941) In October, 1940, the two Brotherhoods became union rep-

resentatives of these 104 employees, according to the Railway Labor Act. Negotiations ensued with the aid of the National Mediation Board for rates of pay and working conditions, but terminated November 6, 1941, without an agreement. The Brotherhoods called a strike for December 9th, but agreed to an indefinite postponement after the attack on Pearl Harbor. Negotiations were resumed, but an agreement was not reached. The employees, however, remained at work under the old conditions and pay.

On December 17th and again on December 28th the National Mediation Board requested the Railroad and the employees to submit to arbitration in view of the national emergency (R. 791). The employees agreed but the employer refused and has maintained its refusal up to the present (R. 789).

On December 21st the Railroad served notice that its own rates of pay and working conditions would go into effect December 29th (R. 11). The 104 employees had the alternative to accept or withdraw from service. They quit work December 28th and plaintiff supplanted them with nonunion employees.

Picket lines were formed and there were incidents of assault and violence on December 29th, 30th, 31st and January 1st and 2nd (R. 137, 148, 171, 189). During the strike plaintiff employed twenty-nine armed guards or special agents to ride the trains (R. 784). One of the strikers, Dilley (R. 824), was shot as he stood near the right of way by a special agent in the cab of a locomotive. The only substantial damage to property was shattered glass in cabs, headlights and switches. Plaintiff did not cease operation of its road, but there were some temporary delays. Two individuals were arrested (R. 82, 393, 839). The record discloses no other request for arrests during the strike. Practically all complaints of violence originated in Peoria and adjoining County of Tazewell,

Illinois (main office of plaintiff). Mr. Beste, superintendent of plaintiff, testified (R. 76) that the police chief of the Village of East Peoria told him ample protection could not be guaranteed but Beste said he knew of no occasion when police refused to respond to the scene of a disturbance.

The only public official called as a witness by plaintiff was the Sheriff of Peoria. He told of a phone conversation, with Mr. McNear, president of plaintiff, in which the Sheriff 'assured he would do all he could to protect the road, but mentioned his force was limited (R. 380). This was the only occasion a representative of plaintiff contacted this Sheriff except January 2nd (R. 382), when the Sheriff's office had a phone call about probable trouble. Deputies were immediately dispatched. On December 31st plaintiff's president requested Sheriff Donahue of Tazewell County to post deputies on twenty-four-hour duty on the lane at the entrance to plaintiff's property where the strikers were picketing. The request was complied with (R. 724). On January 2nd Mr. McNear sent telegrams to: the sheriffs of eleven Illinois counties through which the road operated (R. 734, 746); and requested each sheriff to telegraph whether he would furnish protection by supplying men "to ride and convoy the trains" through the respective county. Some sheriffs did not reply. Others said they would afford protection but could not supply officers to ride the trains (R. 735).

The complaint, which covers forty pages of the printed record (R. 3-43), was filed on Saturday, January 3rd, within twenty-four hours after Mr. McNear dispatched his telegrams. An ex parte hearing was held before the Court on Saturday afternoon and a restraining order issued the same day without prior notice to defendants.

The complaint charges a federal question or jurisdiction by averring that plaintiff is subject to Acts of Congress (R. 3), i. e., "An Act to Regulate Commerce, the Railway Labor Act of U. S., and a Federal Statute entitled War Utilities." Also by averring (R. 28) that jurisdiction is invoked because of rights given plaintiff by the Constitution and Laws of the United States.

Defendants' answer denied a federal question and jurisdiction. The answer also denied averments of the complaint about violence, and that public officers were unable or unwilling to furnish adequate protection for plaintiff's property. The answer averred (R. 994) that the plaintiff refused reasonable efforts to settle the dispute with the aid of governmental machinery for negotiations, mediation and voluntary arbitration.

Both by his oral announcement and written order awarding the injunction (R. 955, 976) the District Judge decided there was a federal question in the controversy and jurisdiction because of the Act of Congress, namely, "An Act to Regulate Commerce," and all acts amendatory and supplementary thereto.

SPECIFICATION OF ERRORS.

- of the temporary restraining order beyond five days because Section 7 of the Norris-La Guardia Act declares that such an order "shall be effective for no longer than five days and shall become void at the expiration of said five days."
- . (2) The District and Appeals Courts erred by deciding that the controversy presented a federal question and by holding jurisdiction of the subject matter.
- (3) The evidence did not show that public officers were unable or unwilling to furnish adequate protection for plaintiff's property. Section 7 (a) of the Norris-La Guardia Act requires such a showing as a condition precedent to an injunction and the lower courts erred in their refusal to dismiss the complaint on this ground.
- (4) The law (Norris-La Guardia Act, Sec. 8) prohibits injunctive relief in a labor dispute to any complainant who has failed to make every reasonable effort to settle such dispute with the aid of governmental machinery. Plaintiff admits its refusal to comply with the request of the National Mediation Board for voluntary arbitration. The District and Appeals Courts erred by awarding the injunction under these circumstances.

ARGUMENT.

SUMMARY.

I. This case has not become moot. Because of the rail-road management's refusal to settle the labor dispute out of which this case arose, the railroad is now federally operated. The regular management has repeatedly protested the working conditions under which the road is now federally operated, which were the conditions involved in the labor dispute. The management has also requested the early return of operations to it. Unless the injunction is dissolved, any person, upon return of the road, will be subject to fine or imprisonment for its violation.

Three men have been found guilty of contempt for violation of the temporary injunction. The District Court has suspended a fine or imprisonment sentence awaiting the decision of this Court of this appeal. A finding by this Court that the District Court was without jurisdiction as we urge here, will free these men.

The case is not moot because this appeal will decide the question of liability on the injunction bond and of damage for its issuance.

II. The temporary restraining order was issued January 3, 1942. Section 7 of the Norris-La Guardia Act clearly states that this order was effective "FOR NO LONGER THAN FIVE DAYS AND VOID AT THE EXPIRATION OF FIVE DAYS." On January 8, 1942, the District Court (R. 66) ordered an extension of the same order for a period of nine days, and on January 16, 1942, the Court again ordered (R. 965) that the order of January 3, 1942, should be extended for a period of three additional days. The clear language of the statute prohibits these extensions, and the Circuit Court of Appeals should have decided that the orders were void.

III. Neither the complaint nor evidence demonstrates that a decision of this controversy requires the application. or construction of the Constitution or any law of the United States. For this reason the suit should have been dismissed for lack of federal jurisdiction of the subject matter. The Appeals Court expressly concedes the longestablished rule, but holds (R. 26) that because the Interstate Commerce Act imposes certain duties on a common carrier that a federal court has jurisdiction to restrain third parties not regulated by the Commerce Act (striking employees) from interfering with the performance of such duties by the carrier. But the opinion of the Circuit Court of Appeals declares: "The Interstate Commerce Act includes no specific provision as to restraint of violent strikes against a carrier engaged in interstate commerce at the suit of the earrier" (R. 1024). By its own language the opinion admits a lack of legislative foundation for the injunction and the absence of a federal law as .. a basis for jurisdiction. The opinion announces a new doctrine of enlarged jurisdiction for injunctions and other common-law femedies without congressional sanction, and should not be allowed to stand.

IV. Section 7 of the Norris-La Guardia Act requires a finding that public officers are unwilling or unable to protect property as a condition precedent to an injunction. Under Illinois law the same finding would be sufficient to remove a sheriff from office and to impugn the sovereign competency of the state. The Sheriff has the power to deputize practically all adult citizens and the Governor has the duty to employ the militia. There is no evidence the Governor was requested to act in this controversy. There were but 104 men on strike. Plaintiff had twenty-nine armed guards, and the evidence fails to show that local officers were unable or unwilling to perform their duty to protect property.

V. The strike was provoked by plaintiff's declaration of December 21, 1941, that its own rates of pay and working conditions would go into effect December 29th. Plaintiff knew these conditions were unacceptable to the men. The employees were then at work and no strike order was pending. The employees had agreed on December 17th to submit to voluntary arbitration at the request of the National Meditation Board. They repeated their willingness to do this on December 28th: The nation was then at war and a national emergency existed. The employer refused these same requests for arbitration which would have prevented the strike. Section 8 of the Norris-La Guardia Act prohibits an injunction when the evidence shows that a complainant has failed to exercise reasonable efforts to settle the dispute by arbitration. By the law and this evidence the injunction was prohibited and should have been denied.

I.

The Questions Presented on This Appeal Have Not . Become Moot.

On April 20th, 1943, after this writ of certiorari was granted, the clerk of this Court sent a letter to counsel in which he stated:

"The Court has directed me to write counsel requesting that in their briefs and on the oral argument they discuss whether there are any facts which have made the case moot."

This injunction has not been altered, modified or dissolved in any respect and still stands in the same form and with the same effect as issued. After the injunction was awarded, contempt proceedings were instituted in the District Court, trials had and defendants found guilty, as later explained in this argument. The District Court imposed sentence, but ordered that such sentences should not

be executed until thirty days after final determination by this Supreme Court of this present cause.

On March 21st, 1942, by executive order No. 9108, the President of the United States ordered the Office of Detense Transportation to take possession of and operate the plaintiff railroad until the President should reinstate its regular management. The President's order shows that it was issued because of the railroad management's refusal to settle the same labor dispute out of which this present court proceeding arose. The Director of Defense Transportation did take possession of the railroad and is still operating it. The injunction is still in effect, but difficulties have subsided since the Director of Transportation has been the operator.

When the road was taken over by the Government the same rates of pay and working conditions that had been in effect on other railroads in the United States became operative with the resulting suspension of the strike. The regular management, through its president, Mr. McNear, during Government operation, has repeatedly protested these working conditions by letters to the Office of Defense Transportation, through the public press and by other means. Recently President McNear requested the Office of Defense Transportation to return the road to its regu-The return of these properties to its lar management. corporate management may be effected at any time the President of the United States should so order. before, the road will be returned upon the termination of the present war emergency. Unless dissolved, dismissed or held invalid, this injunction will then and at all times be a vital writ and subject any person to trial and punishment who may offend its provisions.

It is clear from the foregoing that the issues of this controversy are distinctly alive and therefore not moot.

There exists another and a complete answer to this question. As shown by the record (p. 985), a rule to show

cause why they should not be held in contempt of court for alleged violation of the injunction was entered against H. J. Dilley, Delmar Newdigate and Paul Brokaw on February 2, 1942. The matter was then set for trial (R. 990) and actually did proceed to trial. After the trial the District Court, on April 7, 1943, entered an order fining these men the sum of \$2,820.06 and ordering that if the fine were not paid by May 10th, 1943, they should be committed to jail until it was paid. This order reads in part as follows:

"Upon consideration hereof, it is ordered, adjudged and decreed by the court that the said H. J. Dilley, Delmar Newdigate and Paul Brokaw, who have each heretofore been duly found guilty by the jury of the violation of the temporary injunction heretofore issued herein January 19, 1942, and their motion for new trial having been heard, considered and overruled, be and they are hereby fined in the sum of two thousand eight hundred twenty and 06/100 dollars (\$2,820.06), together with court costs herein, for contempt of court for violation of said temporary injunction.

"It is further ordered that the said H. J. Dilley, Delmar Newdigate and Paul Brokaw pay to the clerk of this court the said sum of two thousand eight hundred twenty and 06/100 (\$2,820.06), the amount of the fine hereby assessed, together with court costs herein, on or before the 10th day of May, A. D. 1943, and that in default of payment thereof that the said H. J. Dilley, Delmar Newdigate and Paul Brokaw be and they are committed to and confined in the Peoria County Jail, Peoria, Illinois, until the payment of said fine and costs shall have been made."

On May 7th, 1943, after the granting of certiorari by this Court on April 19th, 1943, the District Court amended its order of April 7th, 1943, imposing sentence on these men, by directing that sentence should be suspended until this Court had determined the question involved in this appeal. This order reads in part as follows:

"That the order heretofore entered herein assessing as a fine the sum of \$2,820.06 against the above named petitioners and directing that said fine and the costs thereof as assessed by the Clerk of this Court be paid into court on or before May 10th, 1943, be and the same is hereby amended as follows:

"(1) That the time within which said fine and costs may be paid by the petitioners herein shall be extended until the final determination by the Supreme Court of the United States and for a period of thirty days thereafter of the matter now pending before said Supreme Court of the United States, in which the Toledo, Peoria & Western Railroad is plaintiff and the Brotherhood of Railroad Trainmen et al. are defendants."

The District Court is thus waiting for the decision of this Court before it enforces sentence against these men. Questions presented to this Court relating to the temporary injunction are questions going to the basic jurisdiction of the District Court. It is well settled that lack of jurisdiction by the Court granting an injunction makes the injunction order void and there can be no contempt for its violation. Ex Parte Sawyer, 124 U. S. 200, 8 S. Ct. 482, 31 L. ed. 402; Ex Parte Fiske, 113 U. S. 713, 5 S. Ct. 724, 28 L. ed. 1117; Abbott v. Eastern Massachusetts St. Ry. Co., 19 F. (2d) 463 (C. C. A. 1st). This rule is stated in 32 C. J. 498:

"Since, if an injunction is absolutely void, a disobedience thereof does not constitute a contempt of court, a perfect defense is made out where it is shown that the court was without jurisdiction to grant the injunction."

If this Court should hold that the jurisdictional requirements of the Norris-La Guardia Act or of the Judicial Code were not met, the original order granting the injunction was void, and these men are not guilty of contempt.

The temporary injunction is questioned here on the ground of lack of jurisdiction of the District Court. Consequently, if this Court reverses the order granting the temporary injunction on that ground these men have not been guilty of contempt and would not be sentenced by the District Court. If this Court affirms the order granting the temporary injunction the District Court will then proceed to enforce sentence thereby by fine depriving these men of their property or perhaps of their liberty. Where a man's property and liberty depend upon a decision on appeal, certainly the case is not moot and the Court is not deciding merely academic questions.

We feel that either of the above grounds fully dispose of any question that this case is a moot one. In order, however, that this discussion may be complete we wish to present another ground upon which this question may be decided.

Upon the granting of the temporary injunction the District Court required plaintiff to give bond in the amount of \$5,000.00 (R. 983). The condition of this bond was that if the defendants were improvidently or erroneously enjoined, the principal and surety bound themselves to pay any loss, expense or damage caused defendants by the issuance of the injunction including expenses of defense. Defendants have sustained damage and expense in a considerable sum in this litigation. The decision on this appeal will determine whether or not there is any liability under the injunction bond for this damage and expense. It will determine a definite and substantial right, i. e., whether or not defendants may recover damages sustained by the issuance of the injunction.

Many cases, constituting the great weight of authority, have been decided in this country holding that a case is not most where the appeal will decide the question of liability on the injunction bond and of damages for the issuance of the injunction.

In F. Burkart Mfg. Co. v. Case, 39 F. (2d) 5, a temporary restraining order was granted to prevent defendants from removing timber. On appeal it was contended that defendants had ceased their actions and the case had become moot. In holding that the case was not moot the Circuit Court of Appeals of the Eighth Circuit stated:

"Furthermore, the record shows that, when the temporary restraining order was issued by the Court, the appellant was required to give bond. If the case should be dismissed a liability would accrue on said bond in favor of the appellees and against the appellant. If the judgment of the trial court should be left unreversed appellant therefore would be precluded as to facts vital to its rights. That being true, it is not merely a most question."

In Click v. Sample, 73 Ark. 194, 83 S. W. 932, an injunction suit was brought to restrain members of a school board from entering into a three-month contract with a teacher to begin February 1, 1904. A temporary restraining order was entered. Upon the final hearing on May 6, 1904, the injunction was dissolved and an appeal taken. It was contended on appeal that the contract would have by its terms expired on May 1, 1904, a date prior to the final decree and the case was moot. In holding to the contrary the Court said, at page 932:

"The appellees move to dismiss the appeal on the ground that the contract against which the injunction was leveled had expired by its terms prior to the taking of the appeal and insists that this Court should not entertain a case merely to decide abstract questions, where there is no substantial controversy remaining which is capable of enforcement, and that the costs, which are merely incidents of this terminated controversy, should not cause an appellate court to decide the abstract questions theretofore involved in order to adjudicate them. Authorities supporting these contentions are presented and have

been considered. While the contract in controversy cannot now be enforced or enjoined, there is a judgment of the chancery court dissolving the injunction, and, if that judgment stands unreserved, a liability is fixed upon the appellants and their sureties on the bond. That judgment fixing the liability is a substantial controversy, beyond the costs, and can only be reviewed by hearing this appeal."

In Crom v. Frahm, 33 Idaho 314, 193 Pac. 1013, suit was brought to enjoin a corporation from governing itself according to certain amended articles and by-laws. An injunction was issued upon the filing of a bond and an appeal taken from the issuance of the injunction. It was contended that the case had become moot because defendants had ceased to act according to the amendments. In denying that the case was moot the Court said at page 1013:

"In order to procure the issuance of the injunction respondents were required to give an undertaking in the sum of \$1,000.00, to the effect that they would pay to the parties enjoined such costs, damages; and reasonable counsel fees as they might incur or sustain by reason of the injunction, if the Court should finally decide respondents were not entitled thereto. In view of this obligation it cannot be said the case now before us is without substance and the motion to dismiss is overruled."

In Norman v. Hess (Sup. Ct. of Mo.), 231 S. W. 997, a suit was brought to enjoin the construction of an apartment house allegedly contrary to the restrictive covenants running with the land. These covenants expired December 31, 1920. A temporary restraining order was entered and later dissolved after hearing on April 7, 1919. An appeal was taken and was pending on December 31st, 1920, when the covenants expired. It was contended in the appeal that the case had become moot because of this. In holding to the contrary the Court said, at page 998:

"Upon the issuing of a temporary restraining order by the trial court in this case plaintiffs were required to, and did, give a \$5,000.00 injunction bond. November 29, 1916, the restraining order aforesaid was dissolved by the Court and the temporary injunction denied. On December 2nd, 1916, defendants filed herein a motion to assess the damages on the bond The restrictions in the deed to defendant Hess terminated on December 31st, 1920. While this Court could not issue, or direct the lower court to issue, a restraining order enjoining defendants from constructing said building on block 4864 aforesaid by reason of the termination of said restriction, yet, as plaintiffs have incurred liability on said bond for damages, and have become responsible for the costs of this litigation, should the judgment below be affirmed or the appeal dismissed, they as well as the public still have an interest in the result of the litigation which requires at our hands an investigation of the merits."

In Axelson v. Columbine Laundry Co., 81 Colo. 496, 254 Pac. 990, a temporary restraining order was granted prohibiting defendant, a former employee, from soliciting plaintiff's customers until November 23rd, 1925, as his contract provided. During the pendency of the appeal November 23rd, 1925, passed and it was contended the question had become moot. In holding to the contrary the Court said, at page 994:

"As already stated, the court erred in not dissolving the temporary restraining order. But because of the conditions contained in the bonds given upon the issuance of the temporary restraining order, the defendants are entitled to a correction of the trial court's error in this respect."

In Eastern Union Co. v. Moffat Tunnel Improvement District (Del.), 178 Atl. 864, the Court stated, at page 869:

"That as the attachment below was vacated, the service and return quashed and the garnishee discharged, if the plaintiff should succeed in reversing the order entered by the court below, the attachment could not be restored and its lien, if any there was, revived. Therefore, it is said, the question in this court is moot, and the writ of error should not be To this the plaintiff replies by saying that retained. it was required to give a bond in the court below to indemnify the defendant against all damage by reason of the attachment; and that it is entitled to have this court review the vacating order so that, in case it be determined that it was improperly entered, the plaintiff may be acquitted of its liability on the bond. We are of the opinion that this consideration supplies a sufficient answer to the defendant's motion under this head."

In Harris v. Barrett, 206 Ala. 263, 89 So. 717, an injunction was sought to restrain the enforcement of an ordinance regulating the removal of personal property from the City of Birmingham. It was contended the case was moot: The Court stated, at page 718:

"This is not a moot case, as is suggested by appellant's counsel, since liability on the injunction is dependent on the successful prosecution of the appeal."

In Jones v. Stauffer, 49 Idaho 287, 288 Pac. 419, the Court stated, at page 420:

"A motion to dismiss an appeal on the ground that the substance of the controversy between the parties has disappeared will be overruled if the appeal presents a question the decision of which may result in liability on an injunction bond given in the case."

In Massengill v. City of Clovis, 33 N. M. 394, 268 Pac. 786, a temporary injunction was granted to restrain a paving project. On hearing it was dissolved and a supersedeas refused during the appeal. While the appeal was pending the project was completed. It was claimed the

case was not moot. In holding to the contrary the Court said:

"It is apparent, however, that appellant still has the question of his liability on his injunction bond, and the question whether certain alleged unlawful charges may be made against his property, which questions will become res adjudicate against him if the judgment below he allowed to stand by reason of the dismissal of his appeal. In such case the appeal will not be dismissed."

In New Mexico Motor Corporation v. Bliss, 27 N. M. 304, 201 P. 105, it was stated at page 108:

"Further, the appellant would be liable on the injunction bond which it gave for attorney's fees, and any damage which appellee might have sustained by reason of the injunction. The rule in such cases is well-stated by the syllabus in the case of Kaufman v. Mastin, 66 W. Va. 99, 66 S. E. 92, 25 L. R. A. (N. S.) 855, as follows:

"'Whenever the judgment, if left unreversed, will preclude the party against whom it stands as to a fact vital to his rights, though the judgment, if affirmed, may not be directly enforceable by reason of lapse of time or change of circumstances pending appeal, a writ of error will not be dismissed as involving only a moot case."

In Wisconsin Ice & Coal Co. v. Lueth, 213 Wis. 42, 250 N. W. 819, it was stated at page 821:

"The contention of plaintiff that the question presented here is most is based upon the fact that the period during which the injunction shall operate is past, that the injunction is no longer in force, and that defendant is dead. However, the injunction having been imprevidently granted, with costs, the issue of damages and costs is still in the case, and it cannot be considered as being moot."

In Tolman Laundry v. Walker (Md.), 187 Atl. 836, a temporary injunction was issued to restrain a former employee from violating his agreement not to engage in a competing business for one year. On hearing, the injunction was dissolved and an appeal taken from that judgment. During the appeal the one-year period expired and it was contended that the case was moot. The Court held to the contrary, saying at page 839:

"Notwithstanding the granting of a permanent injunction would now be nugatory, substantive rights remain for determination. When the temporary injunction was issued, the chancellor exacted a bond, with approved security, to indemnify the defendant for all costs and damages occasioned by the issuing of the temporary injunction in the event that the injunction be rescinded. So, if the primary right of the defendant to the writ of injunction be not here. determined, and, in consequence, the appeal be dismissed, the plaintiff has not prosecuted the cause with effect, and its surety's liability under the bond would become fixed for not only costs, but also the damages sustained by the derial to the defendant of the right to serve his new employer on the route the defendant traveled while in the employment of the plaintiff. On the other hand, the determination that the plaintiff was entitled to a permanent injunction would discharge the bond. So a dismissal of the pending appeal cannot be made, since it continues to be a litigation between parties having adverse interests."

In Missouri Electric Power Co. v. Smith (Sup. Ct. of Mo. 1941), 155 S. W. (2d) 113, a preliminary injunction was granted upon the filing of bond to restrain the issuance of certain bonds. After heaving on the merits the injunction was dissolved. Pending appeal the bonds were actually issued and registered. Upon the appeal it was contended the case was moot because the Court could no

longer grant any effective relief. In denying the case was moot, the Court said at page 117:

"Although the said bonds have been registered and an order enjoining the registration thereof would not be issued, yet an issue remains in the case and appellant has an interest in having the same determined, because appellant has incurred liability on its bond and has become liable for the costs of the litigation, should the judgment below be affirmed or the appeal be dismissed. We think the case should, therefore, be determined on its merits."

11.

The statutory language that "such temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of five days" is so clear there is no doubtful meaning for construction and the orders of the District Court (R. 66, 965) extending the restraining orders for an additional eleven days were void. The Circuit Court of Appeals held (R. 1022) that the purpose (of this part of the statute) was "to prevent possibility of irreparable damage and to preserve the existing status until an early hearing would determine whether or not a temporary injunction should be issued." There is nothing in the act to sustain this finding and the Court's conclusion amounts to a reading of new language into the act.

This Court stated, in United States v. Standard Brewery. Co., 251 U. S. 210, 217, 64 L. ed. 229, 234:

"Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it."

The Congress said the restraining order was void at the end of five days and the act provides no qualification or exception. If a District Court can make one extension for some purpose, it can make twenty extensions or more for any or all purposes. The act prescribed a rigid limitation and imposed an inflexible necessity on the complainant and the Court to complete the hearing for temporary injunction within five days, if it desired that there be an injunction from the expiration of the restraining order.

The basic purpose of the Norris-LaGuardia Act is to exclude injunctive relief by federal courts in labor disputes except in the most extraordinary and extreme situations.

A showing for temporary injunction does not require repetitious evidence. A prima facie case is sufficient. If the Court can extend the restraining order in all cases until a hearing for an injunction is completed and is not limited as to the length of the hearing, the statutory five days limitation for the restraining order is subject to judicial nullification. The Court of Appeals also held that if the temporary injunction in this case was proper that the restraining order merged in the injunction and the restraining order was not before that Court. To sustain that view the Court cited City of Reno v. Sierra Pacific Power Co., 44 Fed. (2d) 281, 283 (C. C. A. 9). That case is for injunctive relief to enjoin a municipality from interfering with water meters. It does not tembrace a labor dispute and is not limited by the Norris-LaGuardia Act. A reading of the opinion will disclose additional distinctions, but this is sufficient that the decision is not pertinent to this case at bar.

This section of the Norris-La Guardia Act has not been passed on by this Court. If the restraining order was void between January 8 and January 19, 1942, it will not sustain contempt proceedings that may be brought because of alleged occurrences during that period. The issue is alive and should be determined by this Court.

· III.

Diversity of citizenship is not in this case and a United States court is without jurisdiction unless a federal question is presented by the complaint and evidence. The test for determining the existence of a federal question and consequent jurisdiction as pointed out in the dissenting opinion (R. 1023) has been settled since the opinion of Chief Justice Marshall in Cohen v. Virginia, 6 Wheat, 263, 279, 5 L. ed. 257, 285. The rule has recently been restated in Peyton v. Railway Express Agency et al., 316 U. S. 350, 353, 86 L. ed. 1525 (decided May 25, 1942), in which this Court said:

"Whether a suit arises under a law of the United States must appear from the plaintiff's pleading, not the defenses which may be interposed to or be anticipated by it. Petitioner's pleading, which we have summarized, satisfies this requirement since it adequately discloses a present controversy dependent for its outcome upon the construction of a Federal statute."

The majority opinion in this case (7th C. C. A.) (R. 1023) concedes the rule in the following language:

"To give rise to Federal Jurisdiction, the basis of the suit must be concerned with the validity, construction, enforcement or effect of the statute; anything less is insufficient."

The authorities (decisions of this Court) to which reference is made in the dissenting opinion, particularly Gully v. First National Bank, 299 U. S. 109, 112, 114, 57 S. Ct. 96, 81 L. Ed. 60, 72 (opinion by Justice Cardozo), clearly explain that a suit does not arise under the laws of the United States with consequent jurisdiction in a federal court unless it "really and substantially involves a dispute or controversy respecting the validity, construction or ef-

fect of such a law, upon the determination of which the result depends," and that "the federal nature of the right to be established is decisive—not the source of the authority to establish it."

In this case plaintiff bases its claim for federal jurisdiction upon the theory (alleged in complaint, R. 3, 28) that because interstate commerce is involved and the Federal Constitution authorizes Congress to legislate in that field and because Congress has passed an act to regulate commerce and has enacted the Railway Labor Act and a federal statute called "War Utilities" a federal question is created in this labor dispute.

The complaint does no more than aver a general reference to the statutes. It does not specify any provision or attempt to charge how the construction or effect of the Interstate Commerce Act or other federal law is necessary to decide whether striking employees of plaintiff should be restrained. We contend that under the rule repeatedly announced by this Court and well stated in Norton v. Whiteside, 239 U. S. 144, 147, 36 S. Ct. 97, 60 L. ed. 186, 187, that the complaint is insufficient to support the action and the suit should have been dismissed by the District Court on the pleading or, better stated, that a dismissal should have been granted because the complaint disclosed a clear absence of a federal question and lack of jurisdiction.

The majority opinion (C. C. A.) affirmed jurisdiction of the subject matter because it conceived that determination for an injunction against striking employees-required the construction and enforcement of some provisions of the Interstate Commerce Act. The opinion acknowledges that because "Congress has power to legislate in certain fields is insufficient to confer jurisdiction" and that "the mere fact that interstate commerce is involved and may be affected is not sufficient to justify jurisdiction of a private suit seeking protection of such commerce," and

the opinion points out that "the commerce Act includes no specific provision as to restraint of violent strikes against an Interstate carrier at the suit of the carrier." However, the appeals court sustained jurisdiction because the Commerce Act requires a carrier to provide reasonable and safe facilities and prohibits abandonment of all or any part of a road without authority of the Commerce Commission and because a federal statute provides criminal liability for one who derails a car or destroys a facility, etc., used in interstate commerce. The conclusion of the Court in behalf of jurisdiction is thus stated (R. 1026):

"It cannot be that Congress imposed duties and yet intended that the carrier should be denied Federal relief from interference with carrying out such duties. Congress having set up certain requirements which the carrier must meet when others seeking to prevent it by violence from meeting those statutory obligations it should be permitted to seek protection in a Court of equity of the sovereignty imposing the obligation."

A decision for this injunction does not require a construction or enforcement of the mentioned criminal statute and plaintiff's right to be free from violent interference by striking employees in the conduct of its business does not spring from any provision of the Interstate Commerce Act. Neither the Interstate Commerce Commission, a shipper or anyone is complaining in this case that plaintiff did not perform its duties specified by that act nor is anyone charging that plaintiff abandoned any part of its road.

We suggest that the majority opinion confuses plaintiff's common law right to be free from violent interference with its statutory duties prescribed by the regulatory commerce act. The complaint here is by the carrier itself and the charge is that plaintiff has a right to be free from interference by its striking employees in the performance of its business. Plaintiff is complaining about that common law right. No one is charging it with failure to perform duties under the commerce act. The right of plaintiff and every owner of property to be free from violent interference existed before the Commerce Act was passed. That statute did not enlarge or federalize the right, neither did the Commerce Act originally create plaintiff's natural right to engage in business. The statute was designed to regulate the carrier for the larger good of the public.

It was not the intention of Congress through the Interstate Commerce Act to regulate third parties (striking employees), but only the carriers themselves. Neither did Congress propose through this statute to regulate or solve labor disputes. The history of the act shows it was passed to curb railroad practices which were affecting the general welfare. In review of the events which lead to the law this Court stated in Texas & R. R. Co. v. I. C. C., 162 U. S. 197, 210, 40 L. ed. 940, 944:

"From the very nature of the case, therefore, railroads are monopolies, and the evils that usually accompany monopolies soon began to show themselves, and were the cause of loud complaints. The companies owning the railroads were charged, and sometimes truthfully, with making unjust discrimination between shippers and localities, with making secret agreements with some to the detriment of other patrons, and with making pools or combinations with the other, leading to the oppression of entire communities.

"As, however, the powers of the states were restricted to their own territories, and did not enable them to efficiently control the management of great corporations whose roads extended through the entire country, there was a general demand that Congress, in the exercise of its plenary power over the subject of foreign and interstate commerce, s' ald deal with the evils complained of by a general nactment, and the statute in question was the result

When the Congress passed the Commerce Act it had a right to and did assume that the states would continue to enforce elementary police powers for the protection of all property, whether the property was used in interstate business or otherwise. Whether Congress should provide for injunctive relief against striking employees at the suit of a carrier because the Commerce Act regulates carriers for the benefit of shippers and the public is not a question for the Court, but instead a subject for legislative determination. The controlling fact is that Congress has not so legislated, and in the absence of such legislation an interstate carrier has no greater or different rights to be free from interference by its striking employees than those The right of this plainenjoyed by any other citizen. tiff to have its property protected against violence from striking employees is not of federal origin or nature, but is a right uniformly enjoyed by all citizens, irrespective of the character of their business.

A right such as contended for by plaintiff in this case not having its origin or grant in a federal law, is for enforcement by state courts and one over which federal courts are without jurisdiction.

The majority opinion (C. C. A.) cites In re Lennon, 166 U. S. 548, to support jurisdiction. That case was decided in April, 1897. It was a habeas corpus proceeding which emanated from an injunction granted by the Circuit Court in Toledo, Ann Arbor and Northern Michigan Ry. Co. v. Penn., 54 Fed. 730. It was an action instituted by plaintiff, an interstate carrier, against eight railroad companies, and a labor union constituted of employees of one of the defendant carriers. The complaint charged that defendants and the employees of one defendant refused to accept freight from plaintiff and that defendants were accordingly violating the duty imposed on them by the second paragraph of Section 3 of the Interstate Commerce Act, which provides that all common carriers shall afford rea-

sonable and equal facilities for the interchange of traffic. Plaintiff prayed for a mandatory writ requiring defendant carriers to perform this duty imposed by the Commerce Act and the prayer was allowed.

This decision was almost a half century before the Norris-La Guardia Act, which prohibits an injunction to compel employees to work under any circumstances. Norris-La Guardia Act, March 23, 1932, Ch. 90, Sec. 4, Subparagraph (a), 47 Stat. 70. Moreover, it is completely. different from this case at bar because it is bottomed on the statutory violation by the defendants in refusing to accept interstate freight. The complainant there was the proprietor of a clear statutory right to have its freight accented by the connecting carriers and the defendant railroads had a statatory dufy to eccept it. The purpose of that suit was to force acceptance of freight. The purpose of the present action is to forbid striking employees from interference with plaintiff's property. On page 533 of the opinion written by former Justice Brown of this court, the Court said:

"There could be no doubt of the power of the Court to grant this injunction which bore solely upon the relations of the railway companies to each other."

We desire to briefly demonstrate the factual differences between other cases cited in the majority opinion (C. C. A.).

In Wabash Co. v. Hanahan, 121 Fed. 563, an injunction was sought to restrain officers of a labor union from ordering a strike. The District Judge denied the injunction on the facts. The jurisdictional question was but superficially considered and sustained on authority of Toledo Ry. Co. v. Pennsylvania Co., 54 Fed. 720, explained in one of the preceding paragraphs of this argument.

There are many distinctions between this Hanahan case and the proceedings at bar, but it is sufficient to note that under the prohibition of the Norris-LaGuardia Act (since enacted) such an injunction could not now be allowed to restrain union leaders and employees from striking for a wage increase.

Knudsen v. Benn, 125 Fed. 636, was an oral opinion of a District Judge in a suit to enjoin members of a union not employees of plaintiff from inducing plaintiff's employees to strike. The opinion does not show what the complaint charged, and the only reference to the question of jurisdiction is this meager statement: "The acts here charged constitute an interference with interstate commerce and I suppose some matters are stated mainly to show that it is a case over which a federal court has jurisdiction." Nor does it appear what are the facts referred to as "some matters."

Stephens v. Ohio State Telephone Co., 240 Fed. 759, was a suit by subscribers of a telephone company to compel the company to furnish telephone facilities to them. The Court held it had jurisdiction because the Interstate Commerce Act gave plaintiffs the right to obtain reasonable facilities for telephone service. Since the suit was based on this right granted by a federal statute, it arose under the laws of the United States.

In King v. McLean Asylum of Massachusetts General Hospital, 64 Fed. 331, jurisdiction was based on diversity of citizenship. There was no question of jurisdiction involved.

Richards v. Town of Rock Rapids, 31 Fed. 505, raises the validity of a tax assessment on National Bank shares. The federal jurisdiction was based on Section 5211 of the Revised Statutes of the United States, which prohibited discriminatory taxation against such shares. It was claimed that the tax violated the right given by that federal lay.

In Iowa Loan & Trust Co. v. Fairweather, 252 Fed. 605, plaintiff sought to resist the imposition of a state tax unon Liberty bonds. The Act of Congress providing for the issuance of such bonds declared that they should be exempt

from all taxation. It was held that a federal question was involved because plaintiff's case was based on this right to be free from taxation granted him by federal statute.

Southern Pac. Co. v. Peterson, 43 Fed. (2d) 198, was an injunction suit against the Attorney-General of Arizona to restrain the enforcement of the State Train Limit Law on the grounds that the state law was in violation of the Constitution of the United States.

In Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567, after a hearing by the parties before the Interstate Commerce Commission, the defendant refused to comply with the order of the Commission directing the defendant to receive traffic from plaintiff. Suit was filed in the federal court to force compliance with the Commission's order. Such a suit in the District Court is specifically provided for in Section 16 (12) of the Interstate Commerce Act.

Oregon R. & Navigation Co. v. Campbell, 173 Fed. 957, was a suit by a railroad to restrain the Oregon State Board of Commissioners from putting into operation and effect a schedule of freight rates on plaintiff's railroad in the state. It was charged by the railroad that the schedule was confiscatory and deprived plaintiff of its property without due process of law in violation of the Fourteenth Amendment to the Constitution.

Glenwood Light etc. Co. v. Mutual Light etc. Co., 239 U. S. 121, 60 L. ed. 174, 36 Sup. Ct. 32, was a suit brought by one public utility to restrain another utility from maintaining its poles and wires on the same side of the street as plaintiff. Plaintiff and defendant were citizens of different states and federal jurisdiction was invoked on that ground. The only question in the case was whether or not the amount in controversy was in excess of \$3,000.00.

Carmichael v. Anderson, 14 Fed. (2d) 166, was a suit by the holder of one federal radio license against the holder of another license to broadcast on the same wave length. It was held that the controversy involved an interpretation of the federal licenses and the federal statute under which they were granted. In so doing, the case involved a federal question.

The expansion of federal jurisdiction that would result from the rule announced in the majority opinion (C. C. A.) demonstrates the wisdom of the established jurisdictional test so frequently stated by this Court: Puerto Rico v. Russell & Co., 284 U. S. 476, 483, 77 L. ed. 903, 909; Louisville & Nashville R. Co. v. Mottley, 211 U. S. 149, 152, 29 S. Ct. 42, 53 L. ed. 126, 127.

According to the Circuit Court of Appeals, if a federal statute imposes a duty upon a person, judicial interpretation may read into that statute a provision that such a person has an implied federal right to be free from any act tending to obstruct or prevent the performance of that duty, and a federal court will hear cases seeking remedies for a breach of such an implied right. We suggest the vast number of duties imposed on various classes of persons by the laws of the United States. The official 1940 edition of the U. S. Code covers 4,500 large pages of fine type.

A great volume of litigation in state courts comes from automobile negligence cases. Federal law imposes upon common carriers by truck the duty to furnish transportation and facilities (Part II of the Interstate Commerce Act, Section 16, Act of June 29th, 1938, ch. 811, Sec. 16, 52 Stat. 1240, U. S. C., Title 49, Sec. 316). Assume a motorist damages a truck, thereby impeding interstate commerce. Under the reasoning of the Circuit Court of Appeals the trucker would have a federal right to be free from any act obstructing or impeding the movement of the truck, and a remedy in the federal courts for his damage.

All other interstate carriers have similar duties: Water carriers (Part III of the Interstate Commerce Act, Sec. 305, Act of Sept. 18, 1940, ch. 722, Title II, Sec. 201, 54

Stat. 934, U. S. C., Title 49, Sec. 905); telegraph companies (Act of Aug. 7, 1888, Ch. 772, Sec. 2, 25 Stat. 383, U. S. C., Title 47, Sec. 10); telephone, telegraph and radio companies (Communications Act of 1934, Sec. 201, Act of June 19, 1934, Ch. 652, Sec. 201, 48 Stat. 1070, U. S. C., Title 47, Sec. 201); air carriers (Civil Aeronautics Act of 1938, Sec. 401, Act of June 23, 1938, Ch. 601, Sec. 401, 52 Stat. 987, U. S. C., Title 49, Sec. 481); power companies (Federal Power Act, Act of June 10, 1920, Ch. 285, Sec. 201, U. S. C., Title 16, Sec. 824); pipe line companies, express companies, sleeping car companies [Interstate Commerce Act, Sec. 1, Act of Feb. 4, 1887, ch. 104, part I, 24 Stat. 319, as amended, U. S. C., Title 49, Sec. 1 (3)]. Under the majority opinion such carriers would have similar implied federal rights and U. S. courts similar jurisdiction.

Interstate commerce has been widened until it now touches nearly all phases of a citizen's life. The Food and, Drug Law prescribed federal duties with respect to his food and drugs. Packers and stockyards have federally imposed duties. Security exchanges are subject to federal law as are public utility holding companies, investment companies and investment advisers. Other millions have duties imposed upon them by federal law. Following the reasoning of the Circuit Court of Appeals, each of such duties would create corresponding federal rights that could be enforced in federal courts. This was never intended by Congress,

IV.

The evidence is insufficient to show that the public officials were unable or unwilling to furnish adequate protection for plaintiff's property as required by Section 7 of the Norris-La Guardia Act.

This section (Act of Mar. 23, 1932, Ch. 90, § 7, 47 Stat. 71) provides in part:

"No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute ... except after findings of fact by the court to the effect—

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Plaintiff's evidence relates to incidents of disturbance and violence on December 28th, 29th, 30th, 31st and January 1st and 2nd, practically all of which occurred in Illinois and adjoining counties of Peoria and Tazewell. There were but 104 men on strike (R. 760) on a railroad which extended from Indiana to Iowa, Plaintiff had twenty-nine armed guards (R. 784), who rodes its trains, so there was one armed guard for every 3.5 strikers. There were but two arrests and no request for additional arrests (R. 393).

The Tazewell Sheriff posted deputies for 24-hour duty at the lane where the picketing was conducted (R. 724). The damage to plaintiff's property amounted to broken glass in the headlights and cabs of locomotives, the lamps of switches and cabooses. Although the Sheriffs of Peoria and Tazewell cautioned plaintiff's president that their staffs were limited, there is no evidence that either Sheriff did not act for the suppression of violence and preservation of order. There was only one specific request to the Peoria Sheriff (R. 382). On January 2nd, the day before the complaint was filed in court, plaintiff's president, Mr. McNear. dispatched telegrams to the mayors of cities and sheriffs of Central Illinois Counties requesting these officials to furnish officers to ride upon and convoy trains through their respective jurisdictions (R. 734). The officials who replied assured they would protect plaintiff's property but said they were not in a position to furnish deputies to ride the trains (R. 735)

There is no evidence that police officers and sheriffs were unable to handle any disturbance or situation to which their attention was called or which came to their notice. There is no evidence that the Governor was requested to act because of violence or disturbance. In fact, there is no proof that the chief executive of the state was notified. Under our form of government a sovereign state such as Illinois has the clear duty and unfettered power to protect the property of all its citizens, whether they are engaged in interstate transportation or any other business. The federal government was not designed or empowered to enforce local rights for the protection of property.

In Arkansas v. Kansas T. & T. Co., 183 U. S. 185, 188, 46 L. Ed. 144, 146, which was an injunction suit, this Court, speaking through former Chief Justice Fuller, said:

"The police power was appealed to, the power to protect life, liberty, and property, to conserve the public health and good order, which always belonged to the states, and was not surrendered to the general government, or directly restrained by the Constitution."

Illinois counties are subdivisions of the sovereign state. They were created by the people for the administration of state law. Each county has a sheriff who is "the principal executive officer of the county and may exercise the powers of the sheriff at common law." The People v. Nellis, 249 Ill. 12, p. 23 (decision of Illinois' highest court). The statutes of this state provide: "Any sheriff may call to his aid, when necessary, any person, or the power of the County" (Smith-Hurd Illinois Rev. Stat., Ch. 125, Sec. 18). Cities and villages of the state are likewise subdivisions of the sovereignty and they exist for the purpose of administering law for the common welfare. The Mayor of every Illinois city by statute "has the power to call on every male inhabitant of the city over the age of 18 years to aid in enforcing laws and ordinances" (Smith-Hurd Ill.

Rev. Stat., Ch. 24, Sec. 9, City and Villages Act). The statutes of this state also provide, that when a public official such as a sheriff or mayor refuses to perform his official duty he may be removed from office (Smith-Hurd Ill. Rev. Stat., Ch. 38, Sec. 449, Criminal Code).

The provision of the Norris-La Guardia Act that an injunction shall not be granted unless it is proved that the public officers are unable or unwilling to furnish adequate protection for complainant's property firmly denies federal jurisdiction for injunctive relief in a labor dispute, until it clearly appears that regularly constituted state officials, including the Governor, are proved unable or unwilling to perform their constitutional and lawful duties. Such a finding requires that such officials have refused, which amounts to an offense on the part of such officials under state law, or that they are unable to provide sufficient protection. There is no showing in this record that any pullic official of Illinois refused to perform such duties. The legal machinery available to sheriffs and mayors for the preservation of order, together with the constitutional power of the Governor to employ the militia, makes it manifest there was no inability of the public officials to furnish adequate protection for plaintiff's property. The fact that the respective sheriffs did not accede to the request of plaintiff's president to furnish deputies to ride or convoy the railroad trains does not constitute a legal test of the officers' unwillingness or inability to perform their duty. Neither does the fact that some violence occurred. including personal assaults between individuals out of the presence of these officers, show their refusal or inability to furnish adequate protection. Public officials and peace offcers are not guarantors against commission of crime or the occurrence of violence, and the mere fact that disturbances occur does not prove such inability or unwillingness.

If the Sheriffs and the City and State Officials of Illinois were incompetent or unwilling to protect complainant's

property because of 104 striking employees, the property of other Illinois citizens is in peril, but this is not the case, and the evidence in this record fails to disclose such a breakdown of local and state government.

We suggest it would be salutary for this highest Court of the nation to say that local and state officials may not shift their constitutional duties to a federal court without making a confession of their incompetency.

V.

Section 8 of the Norris-La Guardia Act denies injunctive relief to any plaintiff who has failed (1) to comply with any obligation imposed by law, or (2) to make every reasonable effort to settle the dispute either by negotiation or with the aid of governmental machinery of mediation or arbitration. The lower courts have erroneously construed this section and improperly found that the evidence showed it had been complied with.

This section (Act of Mar. 23, 1932, Ch. 90, Sec., 8, 47 Stat.,72) provides:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

The pertinent facts under this point are undisputed. Prior to October, 1940, plaintiff's employees were members of a company union. Then the two railroad brotherhoods became the employees' accredited representatives under the terms of the Railway Labor Act. Negotiations for an agreement about pay and working conditions were not successful. The Brotherhoods called a strike for December

9, 1941, which was indefinitely postponed after the attack on Pearl Harbor and declaration of war. On December 17th and again on December 28th an agency of the United States Government, i. e., National Mediation Board, requested both sides to submit to arbitration. The employees agreed, but plaintiff railroad refused. In the District Court plaintiff's attorney Sprague testified (R. 789): "We did refuse to arbitrate in December, as I have already testified, and we have not changed our position in that respect."

On December 21st, when no strike order was in effect, the railroad served notice on the men that its own rates of pay and working conditions would go into effect December 29th. Upon receiving such notice the Brother-hood had the alternative of yielding to the railroad's demands or withdrawing from service. The strike was a direct result of plaintiff's enforcement of its own demands and its refusal to comply with the request of the government agency for voluntary arbitration. The employees were still working and there was no violence when plaintiff refused to arbitrate at the request of the Mediation Board on December 17th and December 28th. There is no evidence of threats of violence at that time.

The majority opinion (C. C. A.) holds that a complainant fulfills this provision of the Norris-La Guardia Act if it either mediates or negotiates or arbitrates. The opinion also points out that the Railway Labor Act specifies that refusal to arbitrate "shall not be construed as a viglation of any legal obligation." The Appeals Court construes this part of the Labor Act to mean that arbitration is not a condition precedent to securing an injunction. The applicable section 8 of the Norris-La Guardia Act prohibits an injunction to a complainant who has failed to comply with any obligation imposed by law or to make every reasonable effort to settle the dispute either by negotiation or with the aid of any governmental machinery for mediation or voluntary arbitration.

It is suggested that the plain meaning of the statute does not sustain the distinction or construction of the majority opinion. The clear intent of Congress was to induce settlement without resort to the courts and adjustment without work stoppages. As pointed out in the dissenting opinion, if plaintiff had submitted to the request for arbitration the strike would have been avoided.

It must be presumed that a governmental agency would be fair, just and impartial in the conduct of the arbitration. Plaintiff offered no explanation or justification for its inflexible refusal to respond to the Government's request and its refusal was made at a time when the nation was at war. We do not contend that the railroad here was under legal compulsion to submit to arbitration, but we do say that when a complainant does an act which provokes a strike (giving notice that its own working conditions would be effective December 29th), and, in addition, stubbornly refuses the requested co-operation of the Government when such refusal is not explained, such a complainant is not in such a state of equity to justify equitable relief in its behalf by a federal court, and in these circumstances that an injunction is forbidden by the Norris-La Guardia Act.

Respectfully submitted,

JOHN E. CASSIDY,
JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTER-PRISE LODGE NO. 27, et al., Petitioners,

V\$.

TOLEDO, PEORIA & WESTERN RAILROAD, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY BRIEF OF PETITIONERS.

JOHN E. CASSIDY,
JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Petitioners.

LIST OF AUTHORITIES CITED.

Cases.
Ex Parte Lennon, 166 U. S. 548, 67 S. Ct. 658 6
Morley Construction Co. v. Maryland Co., 300 U. S. 185, 81 L. ed. 593, 57 S. Ct. 325
Newton v. Laclede Steel Co., 80 Fed. (2d) 636 8
Sharp v. Barnhart, 117 F. (2d) 604
Southern Pacific Co. v. Peterson, 43 F. (2d) 198 7
Texas and N. D. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427
Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592
Norris-La Guardia Act, Sec. 7 (Sec. 107, Title 29, U. S. C. A.)
Judicial Code, Sec. 24
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

No.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTER-PRISE LODGE NO. 27, et al., Petitioners,

VS.

TOLEDO, PEORIA & WESTERN RAILROAD, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY BRIEF OF PETITIONERS.

The questions presented for the consideration of this Court (Pet. p. 5) do not require a review of the evidence of alleged violence. These questions relate to (1) extension of the restraining order beyond five days, (2) federal jurisdiction of the subject matter, (3) and (4) proof of compliance with two provisions of the Norris-La Guardia Act. Respondent has, however, insisted on making an extended statement as to purported proof of violence and, in addition, attaching a diagram with "red dots" to

show such alleged violence. Lest this statement create an impression of magnitude and extensiveness as to these acts, we wish to point out to the Court that, with the exception of one exchange of blows between pickets and a strike-breaker following an automobile accident (R. 82) and an incident where a bottle of inflammable liquid was thrown upon an engine (R. 413), in which defendants insist no striking employee was involved, and several times when rocks were thrown at passing trains (R. 129), the proof of violence consisted almost entirely of testimony by railroad inspectors that at remote places in the company's line they found that glass had been broken in switch lights and that other minor damage had in some unexplained manner occurred to railroad property.

I.

At the request of this Court, communicated to us by the clerk, we discussed at length in our brief the question as to whether or not this case is moot. Respondent has not made any attempt in its brief to discuss this question. Yet it has seen fit to criticize us for referring to events occurring subsequent to the record in this case. According to the clerk's letter, this Court desired us 'to discuss' "whether there are any facts which have made the case moot." In view of this Court's request, we are at a loss to understand the attitude of respondent in criticizing us for discussing these facts and submit it is entirely unwarranted.

Complying with the Court's request, we have pointed out certain facts which we believe have continued this case as vital. We have shown that the District Court suspended enforcement of a contempt fine awaiting the decision of this Court on this appeal. We have shown that when the road is returned to private management, the same issues between the employer and the union will arise and the injunction will have application. We have shown

that the question of liability on the injunction bond alone is sufficient to prevent the case from becoming moot. This, in the absence of anything to the contrary by respondent, should be impressive on this question.

II.

A reading of section 7 (Sec. 107, Title 29, U. S. C. A.) of the Norris-La Quardia Act will demonstrate that there is no basis for respondent's contention that the 5-day limitation relates only to an extension made without notice. The act specifically states that this restraining order became "void at the expiration of said 5 days." It says nothing whatsoever about any extension either with or without notice. The District Court was not authorized to read an exception into the act contrary to its plain language.

III.

The argument of respondent on the question of the jurisdiction of the District Court goes so far afield from the issue involved, that we wish to again point out the real question. District courts, under the Judicial Code, have jurisdiction of cases where the matter in controversy "arises under the Constitution or laws of the United States" (Judicial Code, Section 24).

Cases do not arise under the laws of the United States unless the basic substantive right which a plaintiff claims has been violated or is about to be violated had its origin or creation in an Act of Congress. The right, which is the basis for the relief sought, must have been created by an Act of Congress, so that a court, in deciding whether the relief is authorized, must refer to the statute to determine just what rights Congress has conferred upon the plaintiff. The Court must then be able to construe the act with reference to the facts involved so that one construction will grant the relief asked and another construc-

tion will deny it. This Court has expressed this principle in many cases in language to the effect that the Act of Congress relied upon must be so fundamentally the basis of the lawsuit that its construction in one manner will allow recovery and in another way will defeat recovery.

Respondent, throughout its argument, has avoided a recognition of this proposition. It argues that this case involves the construction of its rights and duties under the Interstate Commerce Act, the Railway Labor Act and the Norris-La Guardia Act. But this misses the point. The railroad is seeking to enforce its fundamental substantive right to be free in its business from acts of violence. This respondent admits, but claims it is a federal right. At page 15 of its brief it states:

"The right asserted by respondent to be free from violent interference of its business as an interstate carrier is created by the Federal Constitution and statutes and not by the state law . . ."

This is the only place where respondent really admits the true issue. Is the right of respondent to be free from violent interference of its business a right created by an Act of Congress, or is it one created by state law? Merely because plaintiffs' business happened to be interstate transportation does not change the situation in the absence of a federal statute creating the right. This was admitted by the Circuit Court of Appeals, which stated (R. 1024):

"We well know that the mere fact that interstate commerce is involved and may be affected, is not sufficient to justify jurisdiction of a private suit seeking protection of such commerce."

The Circuit Court of Appeals then reached the result itdid by reading into the Interstate Commerce Act that because a railroad had certain statutory duties with reference to providing transportation, there was by implication the right of the railroad to be free from interference by any person while it was performing those duties. Congress did not see fit to enact such a provision in the act. Whether or not such a provision should be in the act is a matter for Congress alone.

Nor does the Railway Labor Act create any such right to be free from violent interference. It merely provides a machinery for the settlement of labor disputes and does not in any of its provisions deal with the subject of interference with the operation of railroads. Nor has respondent pointed out any such provision. Its argument relating to this act is that it contains a provision that arbitration is not compulsory and that, therefore, it has made every reasonable effort to settle the dispute as required by the Xorris-La Guardia Act.

Consider this argument. We are attempting to determine a jurisdictional question, i. e., whether this case "arises" under a federal statute. Respondent does not point to a statute creating any substantive right, but points to another jurisdictional statute as being the statute upon which the case arises. The meré construction of a jurisdictional or procedural statute does not make a federal question. What must be involved is the construction of a statute creating a substantive right. This substantive right must be so fundamentally the basis of plaintiff's right to recovery that its construction one way as applied to the facts of the particular case will defeat the case and another way will allow recovery. It could be just as logically argued by respondent that this present jurisdictional point involves the construction of Section 24 of the Judicial Code, and, since a construction of this section in one manner will defeat him and in another will not, a federal question is involved. Similarly, it could be argued that when any other procedural or jurisdictional statute was seriously involved in a case, a federal question was involved. But this is contrary to the principle that a case "arises under the laws of the United States," only when

the right sought to be asserted as the substantive basis of the merits of the case, was created by an Act of Congress.

Respondent argues that it was held in Texas and N. D. R. Co. v. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, and in Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592, that federal courts have jurisdiction to entertain suits by the employee to enjoin the employer and therefore the employer should have a right here. Those cases were brought to force the employer to recognize a union as the employees' bargaining agent, as the Railway Labor Act specifically required it to do. No question of jurisdiction was involved or discussed.

Respondent states in its brief (p. 31): "A careful analysis of the issues in instant case will demonstrate that the fundamental principle in this case and in the Lennon case is exactly the same." As we have pointed out, this case (Ex Parte Lennon, 166. U. S. 548, 67 S. Ct. 658) was in its original form a suit by one railroad against other railroads to force the defendants to interchange The Interstate Commerce Act specifically provided that the plaintiff had the express right to have freight interchanged, a thing which the defendants were refusing to do. This Court held that the case arose under a law of the United States, i. e., the statute which created the right of plaintiff to have its freight accepted. In the Lennon case the right asserted by plaintiff to have its freight interchanged was expressly created by the Inter-But where is the federal statute state Commerce Act. that respondent says created its right "to be free from violent interference with its business"? None has been pointed out, and none can be pointed out. The right exists by virtue of the common law of the State of Illinois. and not by federal statutes. Consequently, the case does not "arise under the laws of the United States."

The case of Southern Pacific Co. v. Peterson, 43 F. (2d) 198, quoted from on page 30 of the brief, was a suit to enjoin the Attorney General of Arizona from enforcing the state train length limit law on the ground that it was unconstitutional. The question at issue here was not involved.

Respondent cites Sharp v. Barnhart, 117 F. (2d) 604, as being an answer to our argument that if the reasoning of the Circuit Court of Appeals is followed, motor common carriers which have the same duties with reference to furnishing transportation as railroads, will have the same implied federal right to be free from any act tending to obstruct or hamper them in such transportation, which right may be enforced in federal courts. In the case cited suit was brought to recover damages for the seizure of an interstate truck and its cargo. Certainly such act of seizure was an interference with interstate commerce. Yet the Court stated at page 606:

"We are convinced that the District Court correctly dismissed the suits for want of jurisdiction."

This, we submit, is in accord with our position here. The present case, too, should have been dismissed for want of jurisdiction.

IV.

Respondent argues that, because the evidence showed numerous acts of violence had occurred, that this shows the public officers were unable or unwilling to protect their property. As we have pointed out, the "fifty separate instances" of alleged violence are largely made up of the sort of testimony by employees of respondent that they had found cracked glass in switch lights, etc., with no proof of how the condition occurred, and there were actually only several occasions when real violence occurred. Nor is this argument warranted in its conclusion that, be-

cause violence existed, the public officials have been unable or unwilling to protect plaintiff's property. The only persons who were asked to give any protection were the Sheriffs at Peoria and Tazewell Counties and the City Police of East Peoria. It is true plaintiff notified a number of other sheriffs, city police and mayors on January. 2nd. This was only the day before the injunction complaint was filed. Without doubt it was an attempt to create the evidence required by the act and was too soon before the restraining order to be any evidence of the failure of these officials to furnish protection.

As we have pointed out in our brief, protection was furnished by those officials asked and arrests were made in all instances when requested

In our brief we pointed out that no complaint was made to the Governor and no request was made that the state militia furnish protection. This protection was available on the order of the Governor, but no request for it was made. Respondent attempts to reply by stating that the Governor is not a "public official," and cites Newton v. Laclede Steel Co., 80 Fed. (2d) 636, as so holding. That the Court did not even pass on this question is shown by its statement in the opinion at page 638:

"No issue was made in the brief of lack of showing of the Governor's inability to protect Laclede's property."

The Governor, elected by the people, is certainly not a private official, but, rather, is a public official.

V

Respondent now argues that it has complied with Section 8 of the Norris-La Guardia Act, in that it has actually made every reasonable effort to settle the dispute. This is contrary to the position taken by them in the District Court, where they contended that they had the one alter-

native under this section of complying with the obligations imposed by law or the other alternative of making every reasonable effort to settle such dispute. The "Findings of Fact" made by the Court merely found that the railroad had complied with the obligation imposed on it by law [Par. (d)] (R. 970). At no place did the District Court ever find that it had made every reasonable effort to settle the dispute. In fact, the District Court held otherwise in his oral opinion, stating, at record page 955:

"Gentlemen, I think you men, as lawyers, know there isn't any way the Government of the United States could pass a law compelling arbitration in a case of this sort. I don't think that would be constitutional. It might be the proper thing to do to arbitrate this cause. As far as the Court is concerned and knows, it would be the proper thing to do, but I can't compel that sort of thing."

Thus, the record shows that the District Court found that the proper and reasonable thing for the railroad to have done to settle the dispute would have been to arbi-The Circuit Court of Appeals, in its opinion, trate it. makes a statement somewhat to the contrary. But this it had no authority to do, since such findings in a District Court are not subject to revision at the instance of an appellee who has not prosecuted a cross appeal (Morley Construction Co. v. Maryland Co., 300 U. S. 185, 81 L. ed. 593, 57 S. Ct. 325). And the District Court could not have held otherwise with the evidence in this record showing that the railroad deliberately provoked this strike shortly after war began, in order to make the employees accept their terms or take the consequences of an aroused public feeling against strikes.

A good deal of respondent's argument is devoted to an attack upon the Mediation Board. It charges that it sent telegrams to the Mediation Board requesting the appointment of an emergency board, as provided by the Railway

Labor Act (Title 45, Sec. 160, U. S. C. A.), but the Board, although required by statute to do so, did not notify the President of this request. In defense of the Board, it may be stated that there is no evidence in this record that the Board did not notify the President. Witness Sprague testified (R. 786):

"Well, the Mediation Board never committed itself to us on the matter of the appointment of an emergency board."

In any event, can it seriously be contended that this was a good-faith effort to settle this dispute? The railroad was adamantly insisting on its own rules and working conditions. The Brotherhoods were insistent that the old terms and conditions be continued. The railroad had refused to leave the matter up to arbitration as provided by the Railway Labor Act. It now makes some charge in its brief that the Mediation Board would not be fair and impartial in the conduct of the arbitration (p. 57). The Railway Labor Act provides for selection of one-third of the arbitrators by the carrier, one-third by the employees and the other third by majority vote of the arbitrators. In case they cannot agree on the selection, the Mediation Board selects the remainder.

How can they make such a charge when they do not know what arbitrators would constitute the board?

This method of settlement would have definitely and completely settled the question. The employees were willing to take their chances that the result might be against them, but the railroad did not have enough faith in its position to allow the arbitrators to weigh it against the employees' position. Their reason for refusing to do so is that they feared the arbitrators would not be fair with them. Were they also fearful that the federal courts, which could review the arbitration awards, as the act provides, would also be unfair?

As a substitute for this, they suggested an Emergency Board appointed by the President. But, could this board do anything to force the railroad from its position if it should be found unwarranted? Absolutely not. This board, under the statute, only had the power "to investigate and report respecting such dispute." We submit the railroad was not seriously attempting to settle this dispute when it refused to arbitrate and asked, instead, that an Emergency Board be appointed.

Respectfully submitted,

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JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners,

VS.

TOLEDO, PEORIA & WESTERN RAILROAD,

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY OF PETITIONERS TO ADDITIONAL BRIEF OF RESPONDENT.

JOHN E. CASSIDY,
JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES.

OCTOBER-TERM, A. D. 1943.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, et al., Petitioners,

VS

TOLEDO, PEORIA & WESTERN RAILROAD, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

REPLY OF PETITIONERS TO ADDITIONAL BRIEF OF RESPONDENT.

Respondent in its additional brief (p. 2) states that the record shows that the Brotherhoods "called this strike after Pearl Harbor." A reference to paragraph 21 of respondent's own complaint (R. 10) will show this is not true. According to its own complaint, as early as December 6th, H. H. Best, superintendent of respondent railroad, wrote a letter in which he stated that he understood a strike vote had at that time already been taken by the employees. Furthermore, respondent on the same day received a wire from the National Mediation Board advising them that the employees would withdraw from service on December 9th (R. 10).

Respondent further states that the employees did not withdraw their strike notice after Pearl Harbor. Witness Sprague, attorney for respondent, testified (R. 787):

"The strike was postponed by the Brotherhoods," and as far as I know, it was because of the request of the Mediation Board."

Respondent's own complaint shows it provoked this strike (R. 11) by sending on December 20, 1941, an ultimatum to the employees that the railroad's own, schedule of wages and working conditions would go into effect on December 29th, 1941, at 12:01 a. m.

It was after this that the Mediation Board wired the railroad (R. 791) on December 28th advising that the employees had agreed to arbitrate the disputes and requesting it to arbitrate. The railroad replied (R. 790) that it refused to arbitrate. This left the employees no alternative but to accept the railroad's terms or to withdraw from service. This provoked the strike.

On page 5 respondent states that a delivery of freight was prevented on December 29th, 1941, because of threats of violence. The record reference made to support this statement shows that an objection to this testimony was sustained because it was admitted by the witness to be hearsay (R. 590).

On pages 5 and 6 respondent states on January 2nd a cut of cars was not delivered by the Burlington Railroad because of threats of violence. The record shows that the vardmaster, who was on the Burlington train, stopped at Main street in East Peoria when he saw a group of men. He then spoke to Mr. Newdigate, to get a definite statement as to whether he could pass (R. 599). Newdigate's reply was, "Mr. Marts, you know what happened this morning. I cannot say for the rest of these men. I can only speak for myself, and there may be danger for you or some of your men." Marts further testified that (R. 600) there was no evidence of any animosity against the train

crew. There was no show of any threat of violence toward the crew. On the contrary, he said they could pass the picket line with their light engine, and return to the other end of the string of cars. Furthermore, delivery was made the next day without incident (R. 598).

Respondent makes several other statements which seem to challenge statements of facts made by us. We do not believe it necessary to take issue with them because the facts are unimportant so far as the issues here are concerned and a reference to our statements would be a mere repetition.

III.

Respondent tries to make an additional argument in support of the original jurisdiction of the District Court to hear this cause as one arising under the laws of the United States. The new cases cited merely go to the proposition that Congress has the constitutional power to legislate in the field of interstate commerce and any state legislation interfering with interstate commerce is invalid. Respondent has not answered and cannot answer the question raised by us in our briefs and asked by this Court on oral argument:

"On what Federal Statute do you rely?"

No Federal Statute has been cited and none can be cited by respondent which gives them the right of action it here seeks to enforce, i.e., the right to operate its business free from violence. This is a state given right and its case arises under state law and not under the laws of the United States.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 848 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL., Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER AND BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI.

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unwilling to furnish adequate protection for respondent's employees and its property against the violence and threats of violence of petitioners. The findings of the District Court, approved by the Circuit Court of Appeals, are binding upon petitioners.
IV. The undisputed evidence offered by respondent shows it complied with all the obligations imposed on it by the Railway Labor Act and Section 108 of the Norris-LaGuardia Act. The findings of the District Court, approved by the Circuit Court of Appeals, are binding upon petitioners
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Title 19 TI C C A Section 419 (a):

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 848

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL., Petitioners.

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ANSWER AND BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent urges that the Petition for Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit should be denied.

Jurisdiction.

We concede the jurisdiction of this Court under the Certiorari Act to consider a petition for Writ of Certiorari in this case.

Exercise of Jurisdiction.

But we contend that the case at bar presents no circumstances which warrant the grant of Certiorari in this cause since the petition shows that the petitioners are seeking "another hearing". (Magnum Co. v. Coty, 262 U. S. 159; 43 S. Ct. 531.)

We further contend that consideration of a petition for Certiorari is limited to questions specifically presented by the petition; the supporting brief is not a part of the petition, at least for the purpose of stating the questions of which relief is sought. (Rule 38, Paragraph 2, 28 U.S.C.A.: General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 at 177, 58 S. Ct. 849 at 851; Crown Cork and Sed Co. v. Ferdinand Gutmann Co., 304 U.S. 159, at 161, 58 S. Ct. 842 at 843.)

Petitioners argue some questions in their brief which are not stated in the petition.

Reasons Urged in Petition for Writ of Certiorari to Review the Decree and Judgment of the Circuit Court of Appeals in Favor of the Respondent.

Petition at pages 5-6 suggests four questions for the consideration of this Court, and at page 6 states reasons relied on for allowance of the writ.

(1) The first question suggested is, the effect of the order of the District Court extending the temporary restraining order during the hearing on application for temporary injunction.

- (2) The second question is, that of the existence of a federal question and jurisdiction of the subject matter vesting jurisdiction in the Federal Courts.
- (3) The third question is, whether there is substantial evidence in support of the findings of fact upon the question of whether the public officers were unable or unwilling to furnish adequate protection for respondent's property as a condition precedent to an injunction, as required by the terms of Section 7 (e) (Sec. 107, Title 29 U.S.C.A.) of the Norris-LaGuardia Act.
- (4) The fourth question is, whether the facts show that respondent failed to exercise reasonable efforts to settle the dispute with the aid of governmental machinery, as required by Section 8 (e) (Sec. 108, Title 29 U.S.C.A.) of the Norris-LaGuardia Act.

Respondent's Answer to Petition and Reasons Relied Upon for Denial of Writ of Certiorari.

- 1. Respondent has three answers to the first question :-
- (a) The Statute, Title 29, U.S.C.A., Sec. 107, limits a temporary restraining order to five days where it is issued without notice. There is no limitation under the provisions of the Statute upon the validity of a restraining order granted after notice. The orders complained of extending the temporary restraining order were all entered with notice to petitioners and their counsel during the course of hearing upon application for temporary injunction. Each of the orders recited the reasons for the extension. (R. 66-67, 68-71, 965-966).

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(b) The original temporary restraining order signed on January 3rd, 1942 at 3:50 P. M., expired on January 8th, 1942 at 3:50 P. M. (R. 50-60). The hearing on the application for temporary injunction was set for January 8th, 1942 at 10:00 A. M. (R. 60), prior to the expiration

of the temporary restraining order. The hearing began as scheduled and continued without interruption (except for the usual court recesses) until January 19, 1942 at 5:00 P. M. (R. 68, 954), when temporary injunction was entered (R. 982).

During the first day of the hearing, and before the expiration of the temporary restraining order, the Court determined that the case could not be concluded for several days, and at 3:15 P. M. on that day, an order was entered extending the effect of the temporary restraining order to January 17th, 1942 at 3:15 P. M. (R. 66). (A further discussion of the facts relating to both extensions will appear in respondent's reply to petitioner's argument.)

- (c) The temporary restraining order was merged in the temporary injunction, the latter having been issued after due notice and a full hearing.
 - 2. Respondent's answers to the second question are:
- (a) Original jurisdiction in law and equity cases was vested in the District Court by Congress by Title 28, U.S.C.A., Section 41 (8), in all suits and proceedings arising under any law regulating commerce.
- (b) The original jurisdiction of the District Court of the subject matter of this suit is based upon issues involving federal questions under the following statutes: "An Act to Regulate Commerce", and acts amendatory and supplementary thereto; Title 49 U.S.C.A., Transportation Act of 1920, as amended, Title 49 U.S.C.A., and the rights and duties of respondent under the provisions of the Railway Labor Act, as amended, Title 45 U.S.C.A., Sections 151-160; also Title 18 U.S.C.A., Section 412 (a). A determination of the rights and duties of the parties to this suit necessarily required a construction of the meaning and application of such acts by the District Court, as

well as the Norris-LaGuardia Act, to the facts shown in the record.

- (c) Equity jurisdiction in cases arising under the Railway Labor Act was recognized by this Court in Texas & N. O. R. Co., et al. v. Brotherhood of Railway and S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, and Virginian Ry. Co. v. System Fed. No. 40, 300 U. S. 515, 57 S. Ct. 592.
- 3. The answers of respondent to questions 3 and 4 above, which relate to questions of fact found adversely to petitioners by the District Court and the Circuit Court of Appeals, are:
- (a) That the evidence as to acts of violence and destruction of property and cessation of movement in interstate commerce on respondent's railroad was uncontradicted.
- (b) Substantial evidence was offered by respondent proving that the public officers were unable or unwilling to furnish adequate protection for respondent's property and its employees, as required by Section 7 (e) (Sec. 107, Title 29 U.S.C.A.) Norris-LaGuardia Act, and the District Court (R. 970-975) and the Circuit Court of Appeals (R. 1028-1029) concur in the finding of fact that this condition precedent was proved by substantial evidence.
- (c) That the evidence of respondent showing a compliance with all the provisions of the Railway Labor Act (Title 45 U.S.C.A.) with reference to mediation and arbitration was undisputed.
- (d) That the evidence of respondent shows that it in all respects complied with all the requirements of Sec. 8 (Sec. 108 Title 29 U.S.C.A.) of the Norris-LaGuardia Act. No evidence was offered to the contrary.
- (e) The District Court made specific findings of facts on all of these factual questions (R. 970-976) and the Circuit Court of Appeals found the facts in accord with the

District Court (R. 1026, 1028-1029). The concurrent findings of fact of the two Courts below are not shown to be erroneous or unsupported by the evidence, and under the decisions of this Court are accepted as unassailable.

(f) The certiorari jurisdiction of this Court is not exercised simply to grant another hearing to petitioners.

Summary and Statement of Issues Involved.

Petitioners' summary and statement (pp. 1-5) is in accurate and inadequate, and is corrected by the following:

The petition for certiorari is to review the judgment of the Seventh Circuit Court of Appeals affirming a judgment for temporary injunction entered by the District Court restraining petitioners from interfering with respondent, an interstate common carrier, by violence or threats of violence in the transportation of interstate freight.

The order for the temporary injunction in no way interfered with the rights of the striking employees to pursue peaceful picketing, nor did it interfere with other rights as such employees, but only restrained them from violent acts against the employees and the property of the respondent, the interstate carrier. (Order for Injunction, R. 977-982; Findings of Fact, 970-977; oral decision of trial judge, 954-957.)

Respondent is an interstate common carrier operating a railroad from Keokuk, Iowa, to Effner, Indiana. Approximately one hundred conductors, engineers and firemen went on a strike December 28, 1941, at 6 P.M., and immediately acts of violence were committed in nine of the eleven counties in Illinois through which this railroad extends, resulting in serious injury to many employees, destruction of property, interference with the movement

of interstate trains, interference and stoppage of the movement of war materials, all of which resulted in an absolute cessation and total abandonment of the operation of the railroad and the movement of interstate commerce and war materials from Friday night, January 2, 1942, to Sunday morning, January 4, 1942.

Attached to this answer and brief as an appendix is a reproduction of Respondent's (Plaintiff's) Exhibit 21 admitted in evidence (R. 699, 702-709).

A glance at this exhibit will show that more than fifty acts of violence were committed by petitioners from the beginning of the strike December 28, 1941, until the granting of the restraining order January 3; 1942. The situs of the acts of violence are indicated on this exhibit by red dots. This exhibit also discloses the movement of all trains day and night during the period above referred to and the numerous points along said railroad where these acts of violence were committed.

The only defense made by petitioners in the trial of this case, on the merits, consisted of the testimony of various members of the Brotherhoods who denied their personal participation in various incidents where the respondent's witnesses had testified to acts of violence. There was no denial by the petitioners of the fact that these incidents actually occurred, but the defense was limited simply to testimony by certain individuals who attempted to deny their identification and participation in certain acts or incidents where violence was committed. The trial court as indicated by his ruling did not believe the testimony of the petitioners and their witnesses, and in practically every case held with respondent on the question of fact as to who actually participated in each incident where violence was shown.

In other words, the trial judge did not believe the testimony with reference to the alibi which was made in this case by petitioners, which was the kind that usually appears in criminal cases. Several members of the Brotherhood who were identified in serious acts of violence, did not testify in their own behalf.

Not only did the trial court find practically all of the Brotherhood officers and members who were defendants to the injunction proceedings, guilty of violence, (R. 957-958), but the Circuit Court of Appeals, in the last paragraph of the opinion, found that the participation in the acts of violence by the officers of the union, as well as many members, was established by clear proof of actual participation. (R. 1031)

The statement in petition (page 3) that "plaintiff did not cease operation of its railroad but there were some temporary delays" is not a true statement of the facts. The District Judge found as a fact (R. 970-977) specific instances of violence committed by petitioners and interference with the movement of interstate commerce, not only upon respondent's railroad but also upon movement of interstate commerce over other connecting carriers, and that many cars of interstate freight consigned to respondent by connecting carriers were delayed and delivery prevented by reason of the acts and threats of violence to ward employees not only of respondent but also of other railroads.

The Circuit Court of Appeals found (R. 1021-1031) that respondent's workers were assaulted, moving trains stoned trains derailed, windows and lights on the locomotive and cabooses broken, trains stopped and many threats made against respondent's employees, and on one occasion the throwing of a bottle of inflammable liquid into the engine cab of a moving train, causing fire and injury to the occupants.

The Circuit Court of Appeals also found (R. 1026) that the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service; that the violence and threats of violence spread over the entire distance of the length of the railroad from Iowa through Illinois to Indiana (R. 1028).

Reference to the written Findings of Fact signed by the District Judge when the temporary injunction was issued (R. 970-977) will show that the court made a specific finding of fact on each of the allegations of violence as set forth in the complaint, and these findings of fact were affirmed by the decree of the Circuit Court of Appeals.

Petitioners state (pages 3 and 4) that the evidence is insufficient to support the findings that the public officials charged with the enforcement of law were unable or unwilling to perform that duty.

Petitioners offered no testimony disproving the testimony of respondent on the question of the inability or unwillingness of the officers of the law to protect the property and employees of the respondent, and there is no serious conflict in the testimony except in several minor incidents developed on cross-examination.

The testimony offered by respondent on this question was not denied by a single witness called on behalf of petitioners. The District Judge made specific findings of fact (R. 975) that the public officers charged with the duty of protecting respondent's property were unwilling or unable to furnish adequate protection. The Circuit Court of Appeals affirmed that finding in its opinion (R. 1028), and recites the summary of evidence to which respondent refers for the statement of facts on that question. These findings of the lower courts were supported by substantial evidence.

The petition does not accurately and adequately set forth the facts with reference to the efforts of respondent to settle a labor dispute with the petitioners. In October, 1940, as a result of elections held with the consent of respondent, the Brotherhoods became the representatives of the train service employees of respondent. These elections were duly held under the Railway Labor Act and supervised by a mediator of the National Mediation Board.

At all times subsequent to the selection of the Brotherhoods as representatives of the train service employees, respondent recognized and negotiated with these representatives for the men, and with no other persons (R. 775).

The purpose of these negotiations was to negotiate a contract with the Brotherhoods representing train service employees. No contract with the Brotherhoods existed prior thereto for many years.

On November 21, 1941, after both parties to the dispute had refused to arbitrate; the Mediation Board terminated its mediation efforts in the manner prescribed by the statute. (Title 45, U.S.C.A., Sec. 155.) The mediator left Peoria, and mediation proceedings were terminated in the manner prescribed by statute. Following that date, respondent urged the Mediation Board, by exchange of telegrams, to recommend the appointment of an emergency board to be appointed by the President, as provided in the Railway Labor Act, but this was not done. No further mediation was had, and the statement in petition (page 2) that "negotiations were resumed, but an agreement was not reached" is untrue, and is not in any way supported by any evidence in the record.

Petitioners offered no evidence upon the trial, oral of documentary, in any way contradicting the testimony of respondent's witnesses who had attended all conferences and negotiations between the parties from October, 1940, until the day of the filing of the complaint.

A clear statement of the facts on this question is made in the opinion of the Circuit Court of Appeals (R. 1030-1031).

A further discussion on this point will follow in the brief in support of this answer.

BRIEF AND ARGUMENT IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

Reference is made in the petition to the opinion of the Seventh Circuit Court of Appeals, as reported in 132 F. (2d) 265, and also set forth at R. 1020. Respondent also directs the court's attention to the oral statement of the trial judge at the conclusion of the case and before the signing of the findings of fact and the order for temporary injunction (R. 954-958).

SUMMARY OF ARGUMENT OF RESPONDENT IN REPLY TO SUMMARY OF ARGUMENT OF PETI-TIONERS ON PAGES TEN AND ELEVEN OF PETI-TION.

I.

The trial of the application for temporary injunction was begun before the expiration of the temporary restraining order, and the court had power to extend the temporary restraining order during the progress of the trial with notice to petitioners and their counsel who were present participating in the trial when the extension orders were made.

Section 7 (Sec. 107 Title 29 U.S.C.A.) of the Norris-LaGuardia Act relates only to temporary restraining orders entered without notice.

Congress (by Section 7) did not limit the District Court's jurisdiction to enter restraining orders in labor disputes in excess of five days where there is notice, or after a hearing.

Both of the extensions were made after notice and a hearing, to preserve the status quo of the property during the hearing of the application for a temporary injunction.

The temporary restraining order was merged in the temporary injunction, the latter having been issued after due notice and a full hearing.

11.

Original jurisdiction in law and equity cases was vested in the District Court by Congress by Title 28 U.S.C.A. Sec. 41 (8), in all suits and proceedings arising under any law regulating commerce.

The complaint upon its face shows that the injunction prayed for was to restrain petitioners from committing acts of violence and threats of violence, thereby interfering with and preventing the transportation of interstate commerce, and the discharge of the obligations of respondent as an interstate carrier to furnish interstate transportation as required by the Interstate Commerce Act. Section I, (4), (6), (11), (18), (19), (20), Title 49 U. S. C. A.

The District Court had original jurisdiction without regard to the diversity of citizenship or the amount involved, because all the issues are federal questions relating to interstate commerce.

The District Court had jurisdiction under the Railway Labor Act (Title 45 U.S.C.A., Sec. 151-160) because it is provided therein that all interstate common carriers by railroad are included within the provisions of that Act.

The right asserted by respondent to be free from violent interference of its business as an interstate carrier is created by the Federa'. Constitution and statutes, and not by the state law, and the determination of the result of the case depends upon the construction and application of the Federal Constitution and statutes.

Congress in passing the Interstate Commerce Act in 1887, and by the amendments thereto, assumed exclusive jurisdiction in determining the duties and obligations of carriers of interstate freight, and no court, state or federal, has ever held that any of the duties and obligations of an interstate carrier under that act are subject to state legislation, or regulation by the state.

III.

The clear and conclusive evidence offered by respondent shows that the public officers charged with maintaining order were unable or unwilling to furnish adequate pretection for respondent's employees and its property against the violence and threats of violence of petitioners.

The District Court made a specific finding of fact (R. 975), that the evidence proved the failure, inability or unwillingness of the public officers to furnish adequate protection to the property of respondent, and the movement of its trains, and the Circuit Court of Appeals has concurred in that finding (R. 1028-1029).

The concurrent findings of fact of the two lower courts, not shown to be plainly erroneous or unsupported by substantial evidence, are, under the well established rule, accepted by this Court as unassailable.

IV.

The undisputed evidence offered by respondent shows that it complied with all the obligations imposed upon it by the Railway Labor Act, and by Section 8 (Sec. 108, Title 29 U.S.C.A.) Norris-LaGuardia Act.

The District Court made a specific finding of fact (R. 970) that the evidence of respondent proved that respondent by negotiation and mediation complied with the provisions of the Railway Labor Act, and all other laws relating to labor disputes in an honest effort in good faith to reach an agreement with the Brotherhoods, and the Circuit Court of Appeals concurred in that finding (R. 1029-1031).

The concurrent findings of fact of the two lower courts, not shown to be plainly erroneous or unsupported by

substantial evidence, are, under the well established rule, accepted by this Court as unassailable.

Neither the Railway Labor Act nor the Norris-La Guardia Act required respondent to submit to compulsory arbitration to show a compliance entitling it to injunctive relief; respondent fully complied in good faith with all requirements of laws relating to labor disputes by negotiation, mediation and the request for the appointment of an emergency board.

Respondent made no change in its rates of pay, rules and working conditions until more than thirty days after the termination of the mediation proceedings by the National Mediation Board, and in that respect fully complied with Section 5 (Sec. 155 Title 45 U.S.C.A.) Railway Labor Act.

The District Court and the Circuit Court of Appeals concur in findings of fact that petitioners were guilty of violence and threats of violence in obstructing the transportation of interstate freight; and the provisions of Section 8 (Sec. 108, Title 29 U.S.C.A.) Norris-LaGuardia Act/do not apply where acts of violence and threats of violence and destruction of property are committed by employees.

The findings of the District Court and the Circuit Court of Appeals that respondent was not required to arbitrate is in accordance with the first paragraph of Section 7, (Sec. 157, 45 U.S.C.A.) Railway Labor Act. which provides:

"Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: Provided, however, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise." (Italies ours.)

Such findings also complied with the provisions of Section 8, (Sec. 108, Title 29, U.S.C.A.) Norris-LaGuardia Act, which provides:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." (Italics ours.)

RESPONDENT'S REPLY TO PETITIONERS' ARGUMENT.

I.

The District Court properly extended the temporary restraining order after notice during the hearing of the application for temporary injunction, and the temporary restraining order was merged in the temporary injunction.

Section 7 (Sec. 107, Title 29 U.S.C.A.) of the Norris-LaGuardia Act relates only to orders entered without witce. Congress did not limit the District Court's jurisdiction to enter restraining orders in labor disputes in excess of five days where there was notice or a hearing.

The temporary restraining order was entered without notice, limited for a period of five days, expiring January \$1942 at 3:50 o'clock P. M. Application for temporary injunction was set for hearing January 8, 1942 at 10:00 o'clock A. M. (R. 50-60). Notice of such hearing was served upon petitioners and the public officials of the counties, cities and villages interested (R. 64-65). On January 8, 1942 at 10:00 o'clock A. M. respondent in open court began the presentation of its evidence in support of the application for temporary injunction. The hearing continued without interruption (except usual court recesses) until the case was concluded and the order for temporary injunction entered on January 19, 1942, after the District Court had heard a total of 82 witnesses for respondent and 25 witnesses for petitioners.

On January 8, 1942 at 3:15 o'clock P. M. the District Court, after hearing a portion of the evidence and deter-

mining that the hearing of the application for temporary injunction could not be concluded and a decision rendered thereon before the expiration of the temporary restraining order, entered an order extending and continuing in full force and effect such temporary restraining order for a period of nine days, that is, until January 17, 1942 at 3:15 o'clock P. M. The order extending such temporary restraining order was presented to Louis F. Knoblock, one of the petitioners' counsel, at 2:15 o'clock P. M. January 8, 1942, one hour before it was entered (R. 66-67).

On January 16, 1942, the hearing of the application for temporary injunction not having been completed the District Judge entered a further order extending and continuing in force the temporary restraining order until 5:00 o'clock P. M. January 19, 1942, the order reciting the reasons therefor (R. 965-966).

Both of the above orders extending and continuing in force the temporary restraining order were entered with notice to petitioners and their counsel who were present in court at the time of the entry of each order.

Section 7 (Sec. 107, Title 29 U.S.C.A.) of the Norris-LaGuardia Act does not prohibit the District Court from extending the operation of a temporary restraining order, where the extension order is entered with notice or after notice. Both orders specifically recite the reasons for entering the same (R. 66-67, 965-966). These orders to protect employees and property of respondent while the court was hearing the application for temporary injunction were made with full notice to petitioners and after a hearing, and objections thereto in open court (R. 66-68, 965-966).

Petitioners at no time questioned the validity of the original temporary restraining order entered January 3, 1942, nor did they at any time move to vacate the same.

The opinion of the Circuit Court of Appeals (R. 1022-1023) clearly shows the purpose and intent of Section 107, Title 29 U.S.C.A. and the necessity as a practical application of the law of extending and keeping in force the temporary restraining order until the completion of the hearing and decision on the application for a temporary injunction.

If the Court had not extended the effect of the temporary restraining order during the hearing there would have been a period of more than a week during which petitioners, if unrestrained, might have caused further irreparable damage.

Petitioners state (Pet. p. 2) that contempt proceedings were later brought in the District Court, but fail to state that no contempt proceedings were instituted under the temporary restraining order. Respondent stated in its brief in the Circuit Court of Appeals, and here again states, that it has no knowledge or proof of any direct violations of the temporary restraining order at any time between January 8, 1942 and January 19, 1942.

The contempt proceedings were instituted for violation of the temporary injunction, and this additional statement is made by respondent to correct any misconception of the facts which might be obtained from a reading of the petition.

In addition thereto the temporary restraining order was merged in the temporary injunction as specifically held in City of Reno v. Sierra Pacific Power Co., 44 F. (2d) 281-283 (CCA 9th Circuit) and by the Circuit Court of Appeals in this case (R. 1023).

Petitioners (Pet. p. 13) say that if the restraining order was void between January 8, 1942 and January 19, 1942, it will not sustain contempt proceedings that may be brought, and the issue is alive and should be determined

by this Court. In reply to this statement, respondent says that no contempt proceedings have at any time been instituted by respondent for violation of the temporary restraining order or for violation of either of the extensions thereof, and respondent has no knowledge or proof of any violations of the temporary restraining order or extensions at any time during the period between January 8, 1942 and January 19, 1942, and that no contempt proceedings thereunder are contemplated.

II.

The complaint shows upon its face that the injunction prayed for was to restrain petitioners from committing acts of violence and threats of violence, and thereby interfering with and preventing the transportation of interstate commerce and the discharge of the obligations of respondent as an interstate carrier to furnish interstate transportation. The District Court had jurisdiction of the subject matter because all of the issues involved federal questions.

The complaint of respondent alleged facts showing that it was an interstate common carrier of freight by railroad subject to the provisions of an Act entitled, "An Act to Regulate Commerce," and acts amendatory and supplementary thereto, Title 49 U.S.C.A., and the Transportation. Act of 1920, as amended, Title 49 U.S.C.A., and as a common carrier subject to the Railway Labor Act, Title 45 U.S.C.A., Sections 151-160, the War Utilities Act, Title 50 U.S.C.A., Sections 101, 102, 103, 104 & 105 (R. 4), and that jurisdiction of the court was invoked because of the rights given it by the Constitution and Laws of the United States (R. 28).

Under Section 1 (4) of the Interstate Commerce Act it is the duty "of every common-carrier * * * to provide and

furnish * * * transportation * * * to establish through routes * * * and to provide reasonable facilities * * *," eta; under Section 1 (6), "to establish " " facilities for transportation * * *, which may be necessary or proper to secure the safe and prompt receipt, handling, transporting and delivery of property * * *"; under Section 1 (4) "to provide and furnish transportation upon reasonable request therefor * * to provide reasonable facilities for operating such routes"; under Section 1 (11) "to furnish a safe, and adequate car service"; under Section 1 (18) " * no carrier by railroad subject to this Chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until there shall have first been obtained from the Commission a certificate that the present or future public convenience permits such abandonment"; under Section 1 (20) it is provided "any * * * abandonment contrary to the provisions of this Paragraph (or Paragraphs 18 and 19 of this Section) may be enjoined

By Section 151, Title 45, U.S.C.A., it is provided that all interstate common carriers are included within the provisions of the Railway Labor Act. That Act applies only to interstate common carriers by railroad under the jurisdiction of the Interstate Commerce Commission and subject to the Act to Regulate Commerce.

Section 41 (1), 28 U.S.C.A., provides that District Courts shall have original jurisdiction "of all suits of a civil nature, at common law or in equity, " • (a) • • • under the Constitution or laws of the United States • • • "; and sub-section (8) provides "all suits and proceedings arising under any law regulating commerce."

In Peyton v. Railway Express Agency, 316 U. S. 350, at 353, 62 S. Ct. 1171, at 1173, this court said:

"Whether a suit arises under a law of the United States must appear from the plaintiff's pleading, not the defenses which may be interposed to, or be anticipated by it. Petitioner's pleading, which we have summarized, satisfies this requirement since it adequately discloses a present controversy dependent for its outcome upon the construction of a federal statute," (citing cases).

If the plaintiff makes a substantial claim under an Act of Congress, there is jurisdiction whether the claim ultimately be held good or bad. Louisville & Nashville Railway Company v. Rice, 247 U. S. 201; 38 S. Ct. 429.

The District Court necessarily was required to construe the duty and obligations of respondent under the federal law known as "An Act to Regulate Commerce" and Acts amendatory thereof, and the Transportation Act, as amended. It was also required to construe and determine the obligations and duties, rights and privileges of respondent under the terms of the Railway Labor Act, Title 45, U.S.C.A., Sections 151-163, and the Norris-LaGuardia Act, Title 29, U.S.C.A., Sections 101, 108. All the rights and privileges, duties and obligations, of the parties to this suit depended upon the proper construction and application of the aforesaid Acts of Congress and the Constitution and laws of the United States.

The opinion of the District Court of Appeals in this case (R. 1020-1031) clearly analyzes the rights and duties of respondent under the Interstate Commerce Act and the other federal statutes (R. 1024-1028). The court also quotes from Title 18, U.S.C.A., Sec. 412 (a) (R.-1025-1026), which makes violent interference with such commerce criminal acts.

The decision of the Circuit Court of Appeals is fully supported by the authorities cited in its opinion (R. 1027, 1029, 1030).

The complaint avers that respondent was operating under and bound by the terms and provisions of the Railway Labor Act (R. 4), and petitioners, in paragraph 3 of their answer, admit this allegation (R. 992-993).

The District Court could not decide this case without construing the provisions of the Railway Labor Act, especially those questions relating to whether or not respondent had made every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Section 7 of the Railway Labor Act (May 20, 1926), 44 Stat. 582, Section 157, Title 45, U.S.C.A., provides that "failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise." This provision of the Railway Labor Act is directly involved in this decision by the contention of petitioners that notwithstanding the express. provision of that statute respondent was obliged to submit to compulsory arbitration. This assertion made by petitioners as a part of their defense, that respondent did not comply with its statutory duty by refusing to arbitrate. midd a question as to the construction of the Railway labor Act as applied to the issues in this case, and the trial court decided this question upon the basis of decisions of this court in the Clerks and the Virginian cases. (291 U. S. 548, and 300 U. S. 515, hereinafter referred to.) (B. 954-955):

This court recognized the equity jurisdiction of federal courts in the following two cases where it considered the constitutionality of the Railway Labor Act, namely: Texas & N. O. R. Co. et al. v. Brotherhood of Railway and S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, and Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 37 S. Ct.

592. In each of these cases this court sustained a decree for temporary injunction in favor of employees who were bound by that Act, and enjoined the carrier from the violation of certain provisions of the Act.

The first case was decided after the original Railway Labor Act was passed in 1926, the second in 1937 after the Act was amended in 1934, and after Section 8 (Sec. 108, Title 29, U.S.C.A.) of the Norris-LaGuardia Act was passed by Congress in 1932.

In Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, at 550, 57 S. Ct. 592, at 60, Mr. Justice Stone, speaking for the court upon the question of the jurisdiction of a federal court of equity to entertain a suit for injunction and the propriety of relief under the provisions of the Act, said:

"Whether an obligation has been discharged and whether action taken or omitted is in good faith or reasonable, are every day subjects of inquery by courts in framing and enforcing their decrees."

Also, in 300 U. S. 552, 57 S. Ct. 602, this court said:

"The decree is authorized by the statute and was granted in an appropriate exercise of the equity powers of the court."

If the federal courts have original jurisdiction to entertain a suit by the employees to enjoin the employer (as recognized by this court in the above cases), then the court has jurisdiction to entertain a suit in equity brought by the employer (the railroad) where the subject matter of the suit arises under the Railway Labor Act, and involves the mutual duties and obligations of the railroad and the employees in a labor dispute.

The original Interstate Commerce Act was passed by Congress in 1887, and the first case involving the construction of the Act, so far as it relates to the duties and obligations of an interstate carrier, was decided on April 3, 1893, by Judge William H. Taft, then a Circuit Judge (later Chief Justice of this court). This was Toledo, Ann Arbor & North Michigan Ry. Co. v. Pennsylvania Co., 54 Fed. 730 (and a companion case in the same volume at 746). Judge Taft, in granting a temporary injunction restraining several railroad defendants and their employees in a labor dispute from refusing to handle cars containing interstate traffic tendered by plaintiff, at page 732 and:

"The jurisdiction of this court to hear and decide the case made by the bill cannot be maintained on the ground of the diverse citizenship of the parties, for the complainant and at least one of the defendants are citizens of the same state. If it exists, it must arise from the subject matter of the suit. invokes the chancery powers of this court to protect the complainant in rights which it claims under the Act of Congress passed February 4, 1887, (24 St. at Large, P. 379) known as the 'Interstate Commerce Act', and an Act amending it passed March 2, 1889, (25 St. at Large, P. 885). These Acts were passed by Congress in the exercise of the power conferred on it by the federal constitution (Article I, Sec. 8, Para. 3) to regulate commerce with foreign nations, among the several states, and with the Indian tribes'. for defendant Arthur contend that the interstate commerce law and its amendments are only declaratory of the common law, which gave the same rights to complainant, and that, therefore, this is not a case of federal jurisdiction. The original jurisdiction of this court extends by Act of Congress passed August 13, 1858, (25 St. at Large, P. 443) to 'all suits of a civil nature, at common law or in equity, * * * arising under the constitution or laws of the United States'.

• • It is immaterial what rights the complainant would have had before the passage of the interstate commerce law. It is sufficient that Congress, in the constitutional exercise of power, has given the positive sanction of federal law to the rights secured in the statute, and any case involving the enforcement of those rights is a case arising under the laws of the United States."

There was a violation of this injunction, and contempt proceedings were instituted resulting in the imprisonment of one Lennon. Lennon filed a petition for writ of habeas corpus, which was decided by the Circuit Court for the Northern District of Ohio, and the order of contempt affirmed. Lennon appealed from that order direct to this court, where the appeal was dismissed. (150 U. S. 393; 14 S. Ct. 123.)

Lennon then appealed the contempt order to the Circuit Court of Appeals for the Sixth Circuit, where the decree of the lower court was affirmed. Certiorari was granted by this court, and on hearing here it was held that Judge Taft had jurisdiction to enter the original decree for injunction, and Mr. Justice Brown in that case, Ex parte Lennon, 166 U. S. 548, 17 S. Ct. 658, at 660, said:

under the constitution and laws of the United States, as it appears to have been brought solely to enforce a compliance with the provisions of the interstate commerce act of 1887, and to compel the defendants to comply with such act, by offering proper and reasonable facilities for the interchange of traffic with complainant, and enjoining them from refusing to receive from complainant, for transportation over their lines, any cars which might be tendered them. It has been frequently held by this court that a case arises under the constitution and laws of the United States

whenever the party plaintiff sets up a right to which he is entitled under such laws, which the parties defendant deny to him; and the correct decision of the case depends upon the construction of such laws."

At pages 18 and 19 of the petition, petitioners discuss the decision of this court in the Lennon case, and state that it was decided almost a half Century before the Norris-LaGuardia Act, which prohibits an injunction to compel employees to work under any circumstances. This Court in the Lennon case did not pass upon the question as to whether it had power to compel the performance of a contract for service, as inferred by petitioners here (pp. 18, 19). But this Court did decide the question of jurisdiction of the federal courts to entertain a suit for injunction upon the basis that Congress imposed upon interstate corriers the duty to furnish reasonable facilities for the interchange of interstate traffic, and that the acts of the defendants in that case directly affected a right and duty of the carrier arising under the Commerce Act.

In instant case respondent at no time has asserted that any court has jurisdiction to compel an employee to continue in service or to perform any service, as that would be contrary to the express provisions of the Railway Labor Act. The injunction in instant case expressly limits its effect to the interference with interstate traffic by the striking employees as a result of their violent acts or threats of violence, and the court clearly stated, not only in his oral opinion in deciding the case, but in the order for injunction, that it had no effect whatsoever upon petitioners' right to strike or their right to refuse to work. (R. 981)

It is said in the petition (P. 19) that the Lennon case was completely different from this case because it was bottomed on the statutory violation by the defendants in refusing to

accept interstate freight, and that the purpose of that suit was to force acceptance of freight. Petitioners recognize by their argument, that Congress did impose obligations upon interstate carriers, the violation of which give the federal courts jurisdiction in equity cases. A careful analysis of the issues in instant case will demonstrate that the fundamental principle in this case, and in the Lennon case, is exactly the same.

It was the duty of respondent under the Commerce Act to deliver freight and furnish reasonable facilities for the interchange of interstate freight with other carriers. The complaint here shows, and the evidence, proves, that respondent was prevented on many occasions, specifically described by the testimony of the witnesses, in making delivery of interstate freight to other carriers due to the fact that petitioners, not by refusing to work, but by force and violence, and by threats of force and violence, prevented respondent to make these deliveries and to perform its duties and obligations.

The purpose of the present action was simply to forbid striking employees (petitioners) from interfering with the movement of interstate freight by reason of their acts of violence and threats of violence. The decree in this case granting the temporary injunction in no wise violates either the letter or spirit of the Norris-LaGuardia Act, and it in no way interferes with the right of petitioners to strike. It does not in any way seek to compel them to continue to work under any circumstances.

What has been said above with reference to the Lennos case applies equally to the comment of petitioners on Wabash Co. v. Hannahan, 121 Fed. 563, and the other cases which they discuss. Petitioners are incorrect in assuming as a basis for the argument with reference to these cases that the injunction in instant case was maintained to restrain the Brotherhood leaders and employees from strik-

ing for a wage increase, or that the injunction was contrary to the letter and spirit of the Norris-LaGuardia Act.

No Federal Court has yet held that an injunction may not be granted restraining an employee from violence and threats of violence, so long as that striking employee's rights to strike are not interfered with by the writ. That is all that the Norris-LaGuardia Act attempts to accomplish, namely: that there shall be no injunction restraining rights of employees to strike, or interfering with their mion activities. The Court, having protected these fundamental rights, then has the right and power to prevent violence and threats of violence against the employer.

The order in instant case from which the appeal was taken, expressly reserves all of the rights guaranteed to an employee by the Norris-LaGuardia Act, and these rights are clearly and specifically set out in the order for temporary injunction. (R. 981-982).

In Macon Grocery Co. v. Atlantic C. L. R. Co., 215.U. S. 501, 30 S. Ct. 184, at 186, 187, this Court approved the rule announced in the above case by Judge Taft.

In Mulford v. Smith, 307 U. S. 38, at 46, 59 S. Ct. 648 at 651, this Court speaking through Mr. Justice Roberts said, page 46:

"Before coming to the merits we inquire whether the court below had jurisdiction as a federal court or as a court of equity. Though no diversity of citizenship is alleged, nor is any amount in controversy asserted so as to confer jurisdiction under sub-section (1) of Section 24 of the Judicial Code, the case falls within sub-section (8) which confers jurisdiction upon District Courts 'of all suits and proceedings arising under any law relating to commerce'." In the recent cases of Southern Pacific Co. v. Peterson and A. T. & S. Fe. Ry. Co. v. same, 43 F. (2d) 198, the court said at 201:

"If, as alleged in the bills, the interstate traffic over the plaintiffs' lines is hindered, delayed and burdened to such an extent as to amount to an unlawful interference with or regulation of interstate commerce, then a cause of action exists calling for equitable relief. These allegations of the bill are specifically denied by the defendant. An issue is thereby tendered and a case presented of which the federal court has jurisdiction."

In the case of The Fair v. Kohler Die & Specialty Co., 228 U. S. 22, at 25, 33 S. Ct. 410, at 412, the Court said:

claim under an Act of Congress, there is jurisdiction whether the claim ultimately beheld good or bad."

The petitioners in their petition (pages 22-23) have misconstrued the effect of the decision of the Circuit Court of Appeals. In effect they say that if a federal statute imposes a duty upon a person, that judicial interpretation may read into that statute a provision that such person has an implied federal right to be free from any act tending to obstruct or prevent the performance of that duty, and a federal court will hear cases seeking remedies for a breach of such an implied right.

In the first place, the premise from which this argument stems has no application to instant case. The rights and duties of an interstate carrier are in no way implied. These rights have been definitely fixed by statutory enactment beginning with the passage of the original Interstate Commerce Act in 1887. In the second place, petitioners overlook the fact that the Constitution of the United

States gave power to Congress to regulate interstate commerce, and Congress entered the field of regulation of commerce between the States when it passed the act of 1887, and by so doing excluded all interference by a state in that field.

All of the cases above cited show that the federal courts have recognized that Congress, by the passage of the Interstate Commerce Act in 1887, took exclusive jurisdiction in determining the duties and obligations of carriers of interstate freight, and no court, State or Federal, has ever held that any of the duties and obligations of carriers under that Act are subject to state legislation or regulation by a state.

In Railroad Commission v. Worthington, 225 U. S. 101, 32 S. Ct. 653, at 655, this Court said:

"It is not necessary to review the cases in this court which have settled beyond peradventure that the national government has exclusive authority to regulate interstate commerce under the Constitution of the United States."

Petitioners at pages 22 and 23 of their brief discuss the large volume of litigation in state courts resulting from automobile negligence cases, and say that federal law imposes upon common carriers by truck the duty to furnish transports and facilities, and conclude with the unwarranted assertion that under the reasoning of the Circuit Court of Appeals in instant case a trucker would have a federal right to be free from any act obstructing or impeding the movement of the truck, and a remedy in the federal courts for his damage.

This argument is unsound, and is completely answered by the decision of the Circuit Court of Appeals of the Seventh Circuit in Sharp v. Barnhart, 117 F. (2d) 604, in the opinion by Judge Evans, which case involved the

stoppage of a motor truck. In this opinion, Judge Evans very clearly draws the distinction between the right of the operator of a truck engaged in interstate commerce and one which is under the terms and provisions of the Motor Carrier Act of Congress, and there points out that the operation of motor vehicles on the public highways of the State are subject to the local supervision and local laws with reference to the operation of said vehicles. Also see Welch Co. v. New Hampshire, 306 U. S. 79, at 85, 59 S. Ct. 438, at 441; 83 L. Ed. 500, and the cases there cited.

A motor truck is operated upon a public highway which is used by the public generally either for the purpose of hauling interstate freight, intra-state freight or the operation of private motor cars, and Congress by passing the Motor Carrier Act of 1935, 49 U.S.C.A. 301 et. seq., did not intend to supersede or suspend the exercise of the reserve powers of a State in controlling all traffic upon public highways, and the Motor Carrier Act was not extended Jo cover ordinary traffic safety regulations, but these regulations were left to the State.

The distinction between the Interstate Commerce Act as applied to railroads, and the Motor Carrier Act of 1935, is one of the scope of assumption of authority and control by Congress. Under the Interstate Commerce Act, Congress assumed and has retained the exclusive field, to regulate and control, while in the Motor Carrier Act, Congress has taken jurisdiction only in a limited manner.

Under all of the decisions of this court and the Circuit Courts of Appeal, the distinction here made has been recognized, and the federal courts are vested with jurisdiction in cases arising in this exclusive field of interstate transportation by railroads.

The concern of counsel for petitioners that the decision of the Circuit Court of Appeals in instant case will result

in clothing federal courts with further power to consider a great volume of motor vehicle cases is unfounded and unwarranted. As pointed out by Judge Evans in Sharp v. Barnhart, 117 F. (2d) 604, the federal courts are vested with jurisdiction in motor carrier cases only where the vehicle owner has fully complied with the provisions of the Federal Act, and as he so clearly states in that opinion, the motor vehicle carrier, even though transporting interstate commerce, is not under the protection of the federal courts if he has not brought himself within the qualifications required by that Act.

Under all the above cases and the facts alleged in the complaint in this case and proven on the trial, it clearly appears that this suit really and substantially involved a dispute or controversy respecting the construction or effect of the Interstate Commerce Act, the Transportation Act, the Railway Labor Act, the War Utilities Act, and the Norris-LaGuardia Act, and that the result depended upon such determination by the District Court. Under such circumstances the District Court had original jurisdiction of the controversy.

III.

The clear and conclusive evidence offered by respondent shows that the public officers charged with maintaining order were unable or unwilling to furnish adequate protection for respondent's employees and its property against the violence and threats of violence of petitioners. The findings of the District Court, approved by the Circuit Court of Appeals, are binding upon petitioners.

Petitioners made no effort to dispute the voluminous evidence offered by respondent proving that petitioners' were guilty of violence, threats of violence and interference with the movement of interstate trains. Not a single witness was called by petitioners to dispute the facts that the petitioners, in over fifty separate instances, did interfere with the operation of interstate trains and the movement of interstate freight, preventing respondent from the performance of its duty under the Interstate Commerce Act, as an interstate carrier of freight. (See Exhibit 21 attached to this brief as an appendix, giving the times and places upon the railroad where respondent proved violence interfering with the movement of trains.) Under this point petitioners challenge the sufficiency of the evidence to show that the public officers were unable or unwilling to furnish adequate protection, as required by Section 7 of the Norris-LaGuardia Act.

The trial judge, after sitting for almost two weeks and hearing a hundred and seven witnesses in the case, found against petitioners on this point, and made special written findings of fact that respondent had proved that the public officers charged with the duty of protecting respondent's property were unable or unwilling to furnish adequate protection. These findings have been concurred in by the Circuit Court of Appeals (R. 1028-1029), and the petitioners do not show that these findings of the two courts are erroneous or unsupported by the evidence. The petition simply makes an assertion without pointing out clear error committed by the District Court or the Circuit Court of Appeals.

The District Court (R. 975) made the specific finding that the evidence proved the failure, inability or unwillingness of the public officers to furnish adequate protection to the property of the plaintiff and the movement of its trains, and the Circuit Court of Appeals concurred in the findings, and has stated the facts upon which it based its findings (R. 1028-1029). The Circuit Court of Appeals

also found (R: 1026) and stated the facts on that subject as follows:

"In the instant case, the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service."

In Virginian Railway Co. System Federation No. 40, 300 U.S. 515, at 542, 57 S. Ct. 592, at 596, Mr. Justice Stone said:

"The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by evidence. We accordingly accept them as the conclusive basis for decision," (citing cases).

In the case of Texas & N. O. R. Co. v. Brotherhood of kailway and Steamship Clerks, 281 U. S. 548, at 558, 50 S. Ct. 427, at 429, Mr. Chief Justice Hughes said:

"On the questions of fact, both courts below decided against the petitioners. Under the well established rule, this court accepts the findings in which two courts concur unless clear error is shown," (citing cases).

See also Alabama Power Co. v. Ickes, 302 U. S. 464, at 477, 58 S. Ct. 300, at 303.

It should also be noted, in support of the findings of fact on this point, that the Circuit Court of Appeals, as well as the District Court, found that the acts of violence and threats of violence upon respondent were spread over the entire distance of the length of the railroad from the State of Iowa to the State of Indiana. Under such circumstances, even though a sheriff in one of the eleven counties in Illinois in which this road operates was entirely willing to cooperate within his jurisdiction, viz, his county, his protection, even though effective there, would be of no

consequence in the other ten counties in the state through which the railroad was operating.

In Newton v. Lactede Steel Co., 80 Fed. (2d) 636 (7th Circuit), December 17, 1931, that court held that the term "public officials" includes the city and county officials but not the Governor of the state.

Both the District Court and the Circuit Court of Appeals have found that the record contains substantial evidence showing the public officers under duty to protect respondent were either unable or unwilling to furnish adequate protection. Under the authorities above cited, such concurrent findings of fact, not being shown to be plainly erroneous or unsupported by evidence, are accepted as conclusive. These findings show respondent's complete compliance with the requirements of Section 7 (107, Title 29, U.S.C.A.) of the Norris-LaGuardia Act.

IV.

The undisputed evidence offered by respondent shows if complied with all the obligations imposed on it by the Railway Labor Act and Section 108 of the Norris-La-Guardia Act. The findings of the Disctrict Court, approved by the Circuit Court of Appeals, are binding upon petitioners.

On the question as to whether respondent had complied with the provisions of the Railway Labor Act as a condition to its right to seek injunctive relief, the District Court and the Circuit Court of Appeals found the facts as follows, to-wit:

"On December 17, 1940, and January 7, 1941, plaintiff delivered its proposed schedules of rules, working conditions and rates of pay. The services of the Mediation Board were invoked on January 15, 1941.

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and attempts to reach an agreement between the parties continued by the Board until November 21, 1941, when both parties refused to arbitrate and the Board terminated its mediation efforts. Prior to this, plaintiff had submitted its revised and amended proposals of rates of pay, rules and working conditions on November 3, 1941. On December 21, 1941 plaintiff notified defendants that its revised schedules would go into effect on December 29, 1941, and at 12:01 A. M. December 29, 1941 defendants struck. Defendants knew of plaintiff's revised schedule November 3, 1941, and the Mediation Board gave written notification of its withdrawal from the mediation proceedings on November 21, 1941. Both events occurred more than . 30 days prior to the date when plaintiff's orders were put into effect." (R. 1031).

Following this finding of fact, the Circuit Court of Appeals then makes its final conclusion as follows:

"Since section 155 was the guiding section when the controversy was submitted to the Mediation Board, and more than 30 days had elapsed after the Board's withdrawal before any change in plaintiff's rates of pay, rules and working conditions, plaintiff complied with the Act." (R. 1031).

The District Court made a specific finding of fact (R. 970), Par. (d):

"That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes."

The above concurrent findings of fact of the two courts below are not shown by petitioners to be erroneous or un-

supported by substantial evidence, and under the well established rule of this court these findings are accepted as unassailable. (Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515 at 542, 57 S. Ct. 592 at 596; Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548 at 558, 50 S. Ct. 427 at 429; and Alabama Power Co. v. Ickes, 302 U. S. 464 at 477, 58 S. Ct. 300 at, 303.)

Petitioners admit in their brief (page 29) that respondent was under no legal compulsion to submit to arbitration. Taking this as their construction of Section 7 (Sec. 157, Title 45 U.S.C.A.) of the Railway Labor Act, which provides: "The failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise", there is no merit whatsoever in their argument that respondent could not enjoin petitioners from acts of violence and threats of violence.

If respondent complied with the provisions of the law, then it has performed all conditions required of it, for injunctive relief.

Both lower courts have found that a good faith effort was made by respondent to settle the dispute. If respondent was not obliged to submit to compulsory arbitration, there was no other means of settling or attempting to settle the dispute, and especially in view of the fact that the undisputed evidence in the record shows that the Brotherhoods advised the representatives of respondent before the mediation proceedings had formally terminated that there was no rate of pay to which they would agree under the schedule respondent submitted on Novem-3, 1941.

This schedule did not become effective for thirty days after November 21, 1941, and in fact was not actually put

into effect until December 29, 1941. More than the thirty days statutory period had elapsed after the formal termination of the mediation proceedings before this schedule became effective.

In addition thereto, Section 5 (Sec. 155, Title 45 U.S.C.A.) of the Railway Labor Act, provides that during the thirty day period after the termination of the mediation proceedings nothing shall change the finality of the termination of the mediation proceedings, except the appointment of an emergency board under Section 10 (Sec. 160, Title 45 U.S.C.A.) of the Railway Labor Act, or an agreement of the parties to arbitrate.

The record in this case shows that at the time of the withdrawal of the mediator on November 7, 1941, respondent urged the Mediation Board to request the President to appoint an emergency board as provided in Section 10, and this request was made repeatedly until the strike occurred. No action was taken by the Mediation Board to request the President to appoint an emergency board as contemplated by the statute.

The Circuit Court of Appeals made the following finding of fact:

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"An examination of the record indicates, however, that it made an effort by mediation to reach a satisfactory arrangement with defendants, and that, after nearly a year of negotiations, the Mediation Board terminated the proceedings after arbitration proposals submitted by it were refused by both parties. Plaintiff further sought to reach a satisfactory agreement with defendants by suggesting that an emergency board be appointed by the President, as well as that an impartial committee be appointed to examine the dispute. It is thus apparent that there was no lack of good faith by plaintiff to bar its right to an injunction because of refusal to arbitrate." (R. 1029).

This court has definitely decided that the obligation upon a railroad with reference to arbitration in a labor dispute is a voluntary choice, and not compulsory. The first case was Texas & N. O. R. Co. v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548, 50 S. Ct. 427 (decided May 26, 1930), where Mr. Chief Justice Hughes (281 U. S. 564, 50 S. Ct. 431) said:

"While adhering in the new statute to the policy of providing for the amicable adjustment of labor disputes and for voluntary submissions to arbitration as opposed to a system of compulsory arbitration, Congress buttressed this policy by creating certain definite legal obligations. " "The arbitration is voluntary, but the award pursuant to the arbitration is conclusive upon the parties as to the merits and facts of the controversy submitted". (Italics ours.)

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The second case was decided after the amendment of the act in 1934, and was Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592 (decided March 29, 1937), where Mr. Justice Stone, at 605, said:

"The provisions of the Railway Labor Act invoked here neither compel the employer to enter into any agreement, nor preclude it from entering into any contract with individual employees. They do not 'interfere with the normal exercise of the right of the carrier to select its employees or to discharge them.' See the Railway Clerks Case, supra, 281 U. S. 548, 571, 50 S. Ct. 427, 434, 74 L. Ed. 1034."

The construction of the provisions of the Railway Labor Act in instant case by the Circuit Court of Appeals is squarely in line with the construction placed upon it by this court in the above cases, so far as the duty to arbitrate is concerned.

Petitioners do not at any point in their petition or brief say that respondent failed to mediate the dispute, as required by the provisions of the Railway Labor Act. There is no criticism by petitioners of the manner of the mediation, nor is there the slightest suggestion that respondent failed to comply in good faith with all of the requirements of the act relating to mediation:

The Railway Labor Act contemplates the settlement of labor disputes through conferences, or mediation, or voluntary arbitration. The Norris-LaGuardia Act requires that every reasonable effort to settle the dispute be made either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration. There is no requirement in either Act that the employer must mediate and also submit to compulsory arbitration.

The Circuit Court of Appeals of the Fifth Circuit in Mayo v. Dean, 82 F. (2d) 554-556 (1936) passed squarely upon the question raised in instant case as to whether injunctive relief should be granted to a plaintiff in an equity case, in view of the provisions of Section 8 (Sec. 108, Title 29 U.S.C.A.) of the Norris-LaGuardia Act, where mediation was the means adopted and pursued to a conclusion without arbitration, and the court in passing upon that question there said:

"Conceding, without so deciding, that the act applies, we consider it was fully complied with by complainant by availing himself of the services of the mediator of the Department of Labor. He was not obliged to propose both mediation and arbitration. One or the other would be sufficient."

Respondent also urges that where violence and threats of violence are committed by the employees, Section 8 (Sec. 108, Title 29 U.S.C.A.) of the Norris-LaGuardia Act has no application. (Cater Construction Co. v. Nisch-

witz, 111 F. (2d) 971 (C. C. A. 7); United Electric Co. Co. v. Rice, 80 F. (2d) 1 (C. C. A. 7); Newton v. Lacked Steel Co., 80 F. (2d) 636 (C. C. A. 7), and this holding was adhered to in instant case by the Circuit Court (Appeals (R. 1030).

The Seventh Circuit Court of Appeals in United Electric Coal Co. v. Rice, et al., 80 F. (2d) 1, held that the Norris-LaGuardia Act (29 U.S.C.A. 108) limiting power of a federal court of equity to grant injunctions in label dispute cases, does not prevent the court from protecting property from wilful destruction. Certiorari was denied by this court in that case. (Rice v. United Electric Co. Co., 297 U. S. 712, 56 S. Ct. 590.)

CONCLUSION.

WHEREFORE, respondent respectfully prays that the p tition for certiorari be denied.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL., Petitioners,

TOLEDO, PEORIA & WESTERN RAILROAD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Brief of Respondent.

OPINIONS OF THE LOWER COURT.

The Seventh Circuit Court of Appeals' opinion is reported in 132 F. (2d) 265-275, and is set forth in the record (R. 1020-1031). No opinion of the District Court is reported, but the statement of the District Judge made at the time the temporary injunction was granted appears in the record (R. 954-957).

JURISDICTION OF THIS COURT.

Certiorari was granted herein on April 19, 1943.

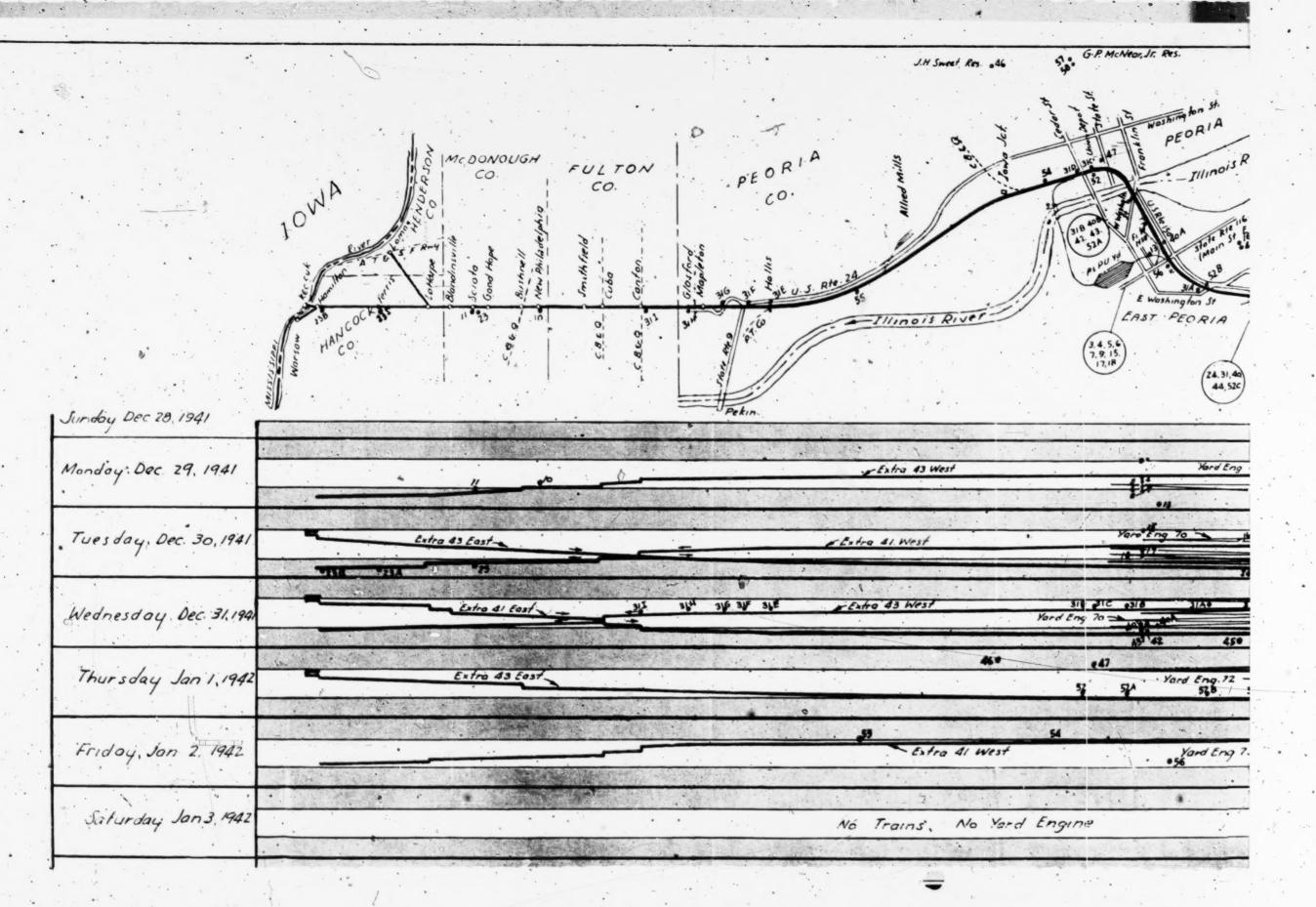
APPENDIX

PLAINTIFF'S EXHIBIT 21

CHART SHOWING OPERATION

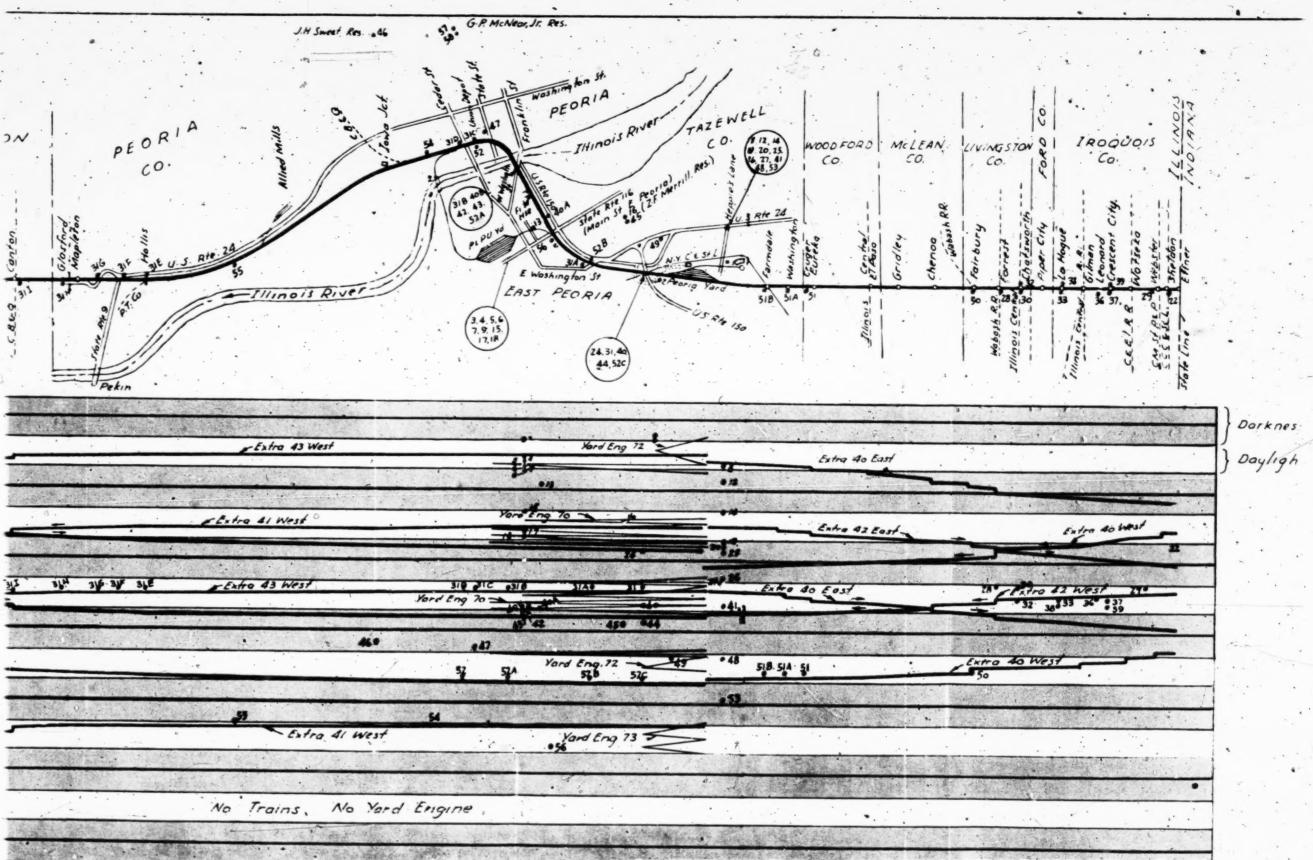
FOLEDO, PEORIA & WESTERN RAILROAD

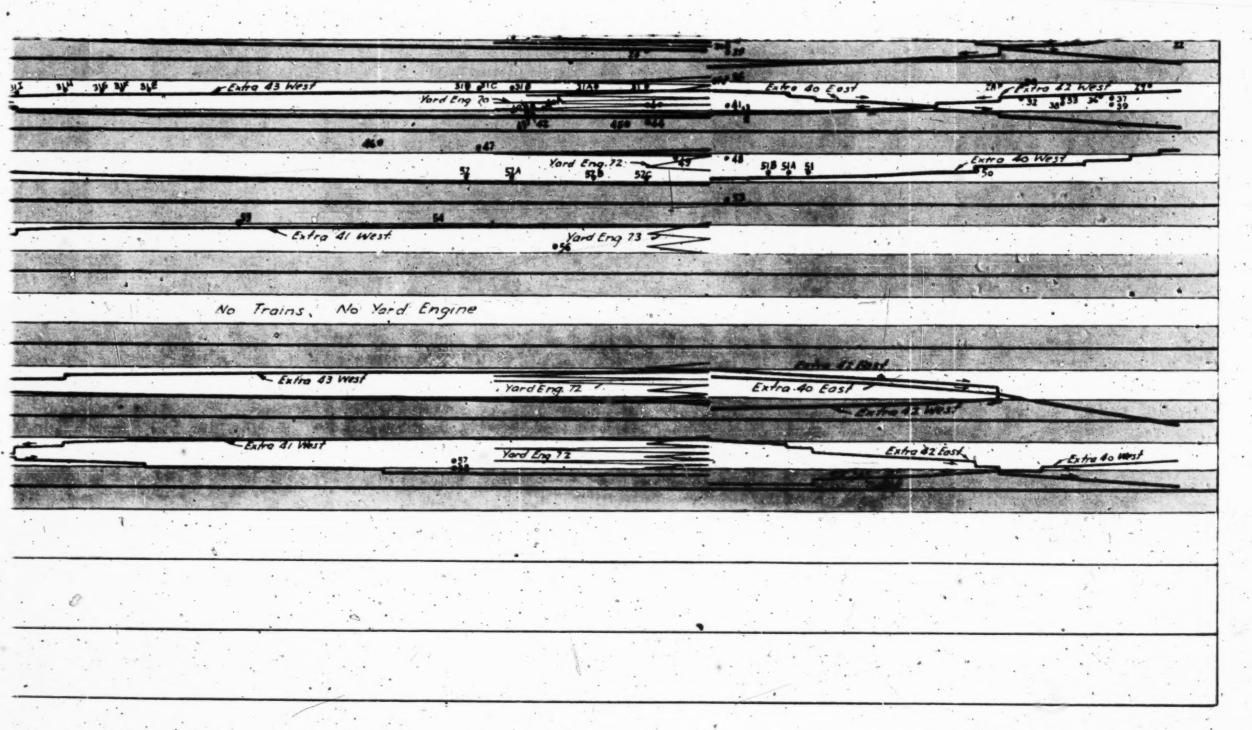
DECEMBER 29, 1941 TO JANUARY 5, 1942





. Denotes act of violence, threat or other interference to the operation of the Railroad.





· Denotes out of violence, threat or other interference

to the operation of the Railroad.

CHART SHOWING OPERATION TOLEDO, PEORIA & WESTERN RAILROAD

DECEMBER 29 1941 TO JANUARY 5, 1942 EORIA, ILLINOIS JANUARY 6, 1942 CEO PEORIA. ILLINOIS Drawn By: RFMc

Correct: weightare NO SCALE

PIF3-M-88

STATEMENT OF THE CASE.

Respondent is obliged to make the following additional statement of facts to correct inaccuracies and omissions in the statement of petitioners.

This is a review of the judgment of the Seventh Circuit Court of Appeals affirming an order of the District Court granting a temporary injunction to respondent.

Respondent is a railroad corporation engaged in interstate commerce. The injunction restrained petitioners from committing acts of violence and threats of violence, against the property and employees of respondent, and from the destruction of its property, all of which was being used in the transportation of interstate commerce.

The complaint avers that respondent is an interstate common carrier engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa through the State of Illinois, with a branch extending from LaHarpe to Lomax, Illinois where it connects with the Santa Fe Railway, and another branch line extending from Hamilton to Warsaw, Illinois (R. 2).

The District Court after hearing witnesses granted a temporary restraining order, without notice, on January 3, 1942 at 3:50 o'clock p.m. (R. 50-60). At the same time the court filed findings of fact in support of the restraining order (R. 43, 49). The restraining order was made returnable January 8, 1942 at 10:00 o'clock a.m., at which time the application for a temporary injunction was set for hearing (R. 50, 60).

On January 8, 1942 at 10:00 o'clock a.m. respondent proceeded with the trial of its application for a temporary injunction (R. 68). The trial continued without interruption (except for the usual adjournments and recess peri-

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OCT 4 1943

CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL.,

Petitioners,

US.

TOLEDO, PEORIA & WESTERN RAILROAD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Brief of Respondent.

John M. Elliott, 1401 Alliance Life Building, Peoria, Illinois,

CLARENCE W. HEYL, 809 Central National Bank Building, Peoria, Illinois, Attorneys for Repondent. ods) until January 19, 1942 when it was concluded and the order signed granting the temporary injunction (R. 977). Finding of fact and conclusions of law were also filed (R. 970-977).

At 3:15 o'clock p.m. on January 8, 1942 and within the five days from the time the temporary restraining order was entered, the District Court entered an order extending and continuing in force the temporary restraining order until January 17, 1942 at 3:15 o'clock p.m., and set forth in the order the reason therefor (R. 66, 67). This order was entered with notice to the petitioners, as they and their counsel were present in the District Court participating in the trial (R. 68, 71).

The trial then continued without interruption until January 16, 1942 at 5:00 o'clock p.m., when it was determined by the Court that the trial of the case could not be concluded by January 17, 1942 at 3:15 o'clock p.m., and the Court entered an order extending and continuing in force the temporary restraining order to January 19, 1942 at 5:00 o'clock p.m. The order recites the necessity for such extension (R. 965, 966). This order was entered with full notice to petitioners and their counsel who were present in Court, and the order recites their objections thereto (R. 965, 966).

Petitioners state that the temporary restraining order of January 3, 1942 was issued without notice. They fail, however, to state that both extensions were with notice during the progress of the trial.

Petitioners do not question here the action of the trial court in granting the temporary restraining order. (See specification of errors Pet. Brief p. 6.)

Respondent contends that the first and second orders extending the temporary restraining order were valid because the statute only limits the validity of a temporary

restraining order to five days where such order is granted without notice. (Title 29 U.S.C.A. Sec. 107.) The orders complained of were entered with notice to petitioners and their counsel, all of whom were in Court participating in the trial. Before the expiration of the second order extending the temporary restraining order the Court concluded the trial and entered the order for a temporary injunction on January 19, 1942 (R. 977, 982), and filed findings of fact and conclusions of law (R. 970-977).

When the court signed the order for temporary injunction the temporary restraining order merged into the temporary injunction.

The complainant avers that respondent as a common carrier of freight by railroad, engaged in interstate commerce, is subject to the provisions of the Act of Congress known as "An Act to regulate Commerce," and Acts amendatory and supplementary thereto, and the Transportation Act of 1920, as amended (R. 4); that it is also subject to the Railway Labor Act, as amended, and that as such common carrier it is subject to and included within the words "war utilities," as defined by the Federal Statute, as amended, Sections 101, 103, 104 and 105, Title 50 of the U. S. Code of the Act of Congress of April 20, 1918, as amended November 30, 1940, Chapter 926, 54 Statute, 1220 (R. 4); that it is engaged in the transportation of freight included within the definition of "war utilities"; that by reason of the unlawful and unauthorized acts of violence of said petitioners, it had been prevented and is now being prevented from the transportation of such articles in interstate commerce (R: 12).

It is necessary that additional facts be stated by respondent showing the circumstances leading to the strike

In October and November of 1940 elections by the train service employees of respondent were held under the pro-

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III. The complaint shows upon its face that the injunction prayed for was to restrain petitioners from committing acts of violence and threats of violence, and thereby interfering with and preventing the transportation of interstate commerce and the discharge of the obligations of respondent as an interstate carrier to furnish interstate transportation. The District Court had jurisdiction of the subject matter because all of the issues involved federal questions 14-15,	23-36

visions of the Railway Labor Act, supervised by John F. Murray, Mediator for the National Mediation Board, which resulted in the selection of the Brotherhoods as their representatives (R. 770-774). At all times subsequent thereto respondent recognized the Brotherhoods and negotiated with their representatives and with no other persons (R. 775).

There is no claim made here that respondent did not at all times after said elections mediate in good faith with the representatives of the men chosen at the elections.

On December 17, 1940 and again on January 7, 1941 respondent delivered to the representatives of the two Brotherhoods, respectively, its proposed schedules of rules, working conditions and rates of pay (R: 780-781). On January 8, 1941 the proposed schedules were discussed by respondent with the designated representatives of the men who informed respondent that they could not accept anything in such proposals, and that they found it necessary to invoke the service of the National Mediation Board (R. 781).

On January 15, 1941 notice was received by respondent from the National Mediation Board that it had taken charge of mediation (R. 779). Mediator Murray, representing the Board, arrived in Peoria on March 17, 1941, and took charge of the mediation of the dispute from that date until November 7, 1941. Numerous conferences were held by the representatives of the men and the respondent presided over by Mediator Murray (R. 776). Exhibit 24 is a memorandum showing the dates and duration of each of the conferences (R. 776-779).

On November 3, 1941 respondent submitted and delivered to the representatives of the Brotherhoods and to Mediator Murray its revised amended proposals of rates of pay, rules and working conditions (R. 782). Media-

tion continued until November 6, 1941 when respondent was informed by the representatives of the Brotherhoods that they could not agree to the proposals. The Brotherhoods were then requested by respondent to suggest a rate of pay for which they would be willing to agree to the rules and working conditions submitted on November 3, 1941 (R: 782).

On the following day respondent was informed by the Brotherhoods that they could not name a rate of pay for which they would accept the proposed rules and working conditions. Thereupon Mediator Murray handed both parties arbitration proposals which proposals were declined by both the Brotherhoods and respondent (R. 782).

On November 17, 1941 respondent requested the National Mediation Board that some impartial fact finding committee be appointed to consider the matters involved in the dispute (R. 785, 786).

On November 21, 1941 after both parties to the dispute had refused to arbitrate, the National Mediation Board terminated its mediation efforts in the manner prescribed by the Statute, advising both in writing that its efforts to settle the controversy by mediation were unsuccessful, and that mediation was terminated as of that date (R. 782) (See, Exhibits 27 and 28 attached to the complaint as Exhibits A and B) (R. 34-37).

From the date of the termination of the mediation as above, until the strike occurred December 29, 1941, respondent continued to urge the National Mediation Board to request the President to appoint an emergency board, as provided by the Railway Labor Act. All of these requests were ignored (R. 785, 786).

Thirty days after the termination of mediation respondent had the absolute right under the statute, without any further notice to the employees, to put into effect its

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Argument (continued):	
IV. The undisputed evidence offered by respond- dent shows that the public officers charged with maintaining order were unable or un- willing to furnish adequate protection for re- spondent's employees and its property against the violence and threats of violence of the petitioners	
V. The undisputed evidence offered by respondent shows it complied with all the obligations imposed upon it by the Railway Labor Act and Section 108 of the Norris-LaGuardia Act. The findings of the District Court on this point, approved by the Circuit Court of Appeals, are supported by substantial evidence16,17,	48-60
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amended schedules of rates of pay, rules and working conditions.

It did not put them into effect, however, until December 29, 1941, but advised the Brotherhoods on December 21, 1941 of the date they would go into effect (R. 11).

The letter of December 21, 1941 (R. 11) was not a notice of new rates of pay, rules and working conditions; it was simply advice to the Brotherhoods and the employees of the date that the schedules submitted November 3, 1941 would become effective.

Petitioners claim that one of the strikers, Dilley, was shot as he stood near the right of way by a special agent in the cab of a locomotive. There is no direct evidence in the record that Dilley was shot by a special agent. He was injured while in a crowd of the strikers who were attacking a train of respondent.

Petitioners in their statement of the case, page 3, claim that, "the only substantial damage to property was shattered glass in cabs, headlights, and switches."

These assertions are untrue. The undisputed evidence shows that employees of respondent were brutally assaulted by certain of petitioners, and on one occasion one of petitioners assaulted a fireman and left him lying near his engine in an unconscious condition (R. 293, 295). That petitioner did not deny the assault. Men were brutally assaulted by petitioners as they were working on the trains, or as they were coming to or leaving their work. On one occasion a train was stopped by certain of the petitioners, and the train crew driven by force and violence from their posts upon the engine (R. 282-292, 293-302, 326, 327, 330-332).

The actions of the mobs led by petitioners in stopping trains and assaulting the employees operating same is

shown by the evidence at the following pages of the record (R. 140-145, 175-184, 190-210, 241, 254, 218-232, 462-469, 443-459, 408-442, 488-494, 511-520).

The testimony showing other acts of violence may be found at the following pages of the record (R. 81-92, 105-117, 140-144, 166-167, 172, 180, 190-199, 202-207, 219-232, 234-240, 241-254, 281-292, 293-302, 326-327, 330-332, 356-360, 361-367, 408-420, 443-459, 463-467, 502-507, 511-520, 521-525, 537-547).

Petitioners also say in their brief that respondent did not cease operation of its road. This statement is incorrect because the record conclusively shows that the violence was so severe that there were no trains operated from Friday night January 2, 1942 until Sunday morning January 4, 1942 (R. 699-702, Exhibit 21). (See p. 61 of this brief.)

The District Court and the Circuit Court of Appeals both found that the violence was so extensive and severe as to prevent the operation of respondent's road (R. 956, 970-977, 1026).

Petitioners in their statement infer, but do not directly charge, that the facts in the record are insufficient to show that the public officers were unable or unwilling to furnish adequate protection to respondent for its employees and its property.

The inference is untrue. The evidence in the record shows that no effort whatsoever was made by any law enforcement officer to protect either the men assaulted or the property. The evidence also shows proper requests were made by respondent to the officers, and they replied that they could no nothing because of the lack of deputies, or because of the size of the mobs led by petitioners (R. 380-386, 408-460, 81, 92, 104-117, 723, 724, 725, 730, 732, 734, 757, 759, 991-999, also see R. 720-752).

These facts were not denied, and petitioners offered no proof to the contrary.

The petitioners filed no pleading before the trial, and did not file an answer to the complaint until February 16, 1942 (R. 991) almost one month after the order for temporary injunction was entered.

SUMMARY OF ARGUMENT.

Petitioners' summary (pp. 7-9) is inaccurate and inadequate, and is corrected by the following:

This is a review of the judgment of the Seventh Circuit Court of Appeals affirming a judgment for temporary injunction entered by the District Court restraining petitioners from interfering with respondent, an interstate common carrier, by violence or threats of violence in the transportation of interstate freight.

The order for the temporary injunction in no way interfered with the rights of the striking employees to pursue peaceful picketing, nor did it interfere with other rights as such employees, but only restrained them from violent acts against the employees and the property of the respondent, the interstate carrier. (Order for Injunction, R. 977-982; Findings of Fact, 970-977; oral decision of trial judge, 954-957.)

Respondent is an interstate common carrier operating a railroad from Keokuk, Iowa, to Effner, Indiana. Approximately one hundred conductors, brakemen, engineers and firemen went on a strike December 28, 1941, at 6 P. M., and immediately acts of violence were committed in nine of the eleven counties in Illinois through which this railroad extends, resulting in serious injury to many employees, destruction of property, interference with the movement of interstate trains, interference and stoppage of the movement of war materials, all of which resulted

in an absolute cessation and total abandonment of the operation of the railroad and the movement of interstate commerce and war materials from Friday night, January 2, 1942, to Sunday morning, January 4, 1942.

Attached to this brief as an appendix is a reproduction of Respondent's (Plaintiff's) Exhibit 21 admitted in evidence (R. 699, 702-709). (See page 61 of this brief.)

A glance at this exhibit will show that more than fifty acts of violence were committed by petitioners from the beginning of the strike December 28, 1941, until the granting of the restraining order January 3, 1942. The situs of the acts of violence are indicated on this exhibit by red dots. This exhibit also discloses the movement of all trains day and night during the period above referred to and the numerous points along said railroad where these acts of violence were committed.

The only defense made by petitioners in the trial of this case, on the merits, consisted of the testimony of various members of the Brotherhoods who denied their personal participation in various incidents where the respondent's witnesses had testified to acts of violence. denial by the petitioners of the fact that these incidents actually occurred, but the defense was limited simply to testimony by certain individuals who attempted to deny their identification and participation in certain acts or incidents where violence was committed. The trial court as indicated by his ruling did not believe the testimony of the petitioners and their witnesses, and in practically every case held with respondent on the question of fact as to who actually participated in each incident where violence was shown.

In other words, the trial judge did not believe the testimony with reference to the alibi which was made in this case by petitioners, which was the kind that usually appears in criminal cases. Several members of the Brotherhood who were identified in serious acts of violence, did not testify.

Not only did the trial court find practically all of the Brotherhood officers and members who were defendants to the injunction proceedings, guilty of violence (R. 957-958), but the Circuit Court of Appeals, in the last paragraph of the opinion, found that the participation in the acts of violence by the officers of the union, as well as many members, was established by clear proof of actual participation (R. 1031).

The statement in brief (page 3) that "plaintiff did not cease operation of its railroad but there were some temporary delays" is not a true statement of the facts. The District Judge found as a fact (R. 970-977) specific instances of violence committed by petitioners and interference with the movement of interstate commerce, not only upon respondent's railroad but also upon movement of interstate commerce over other connecting carriers, and that many cars of interstate freight consigned to respondent by connecting carriers were delayed and delivery prevented by reason of the acts and threats of violence toward employees not only of respondent but also of other railroads.

The Circuit Court of Appeals found (R. 1021-1031) that respondent's workers were assaulted moving trains stoned, trains derailed, windows and lights on the locomotives and cabooses broken, trains stopped and many threats made against respondent's employees, and on one occasion the throwing of a bottle of inflammable liquid into the engine cab of a moving train, causing fire, and injury to the occupants.

The Circuit Court of Appeals also found (R. 1026) that the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service; that the violence and threats of violence spread over the entire distance of the length of the railroad from Iowa through Illinois to Indiana (R. 1028).

Reference to the written Findings of Fact signed by the District Judge when the temporary injunction was issued (R. 970-977) will show that the court made a specific finding of fact on each of the allegations of violence as set forth in the complaint, and these findings of fact were affirmed by the decree of the Circuit Court of Appeals.

Petitioners state (page 31) that the evidence is insufficient to support the findings that the public officials charged with the enforcement of law were unable or unwilling to perform that duty.

Petitioners offered no testimony disputing the testimony of respondent on the question of the inability or unwillingness of the officers of the law to furnish adequate protection to the property and employees of the respondent, and there is no serious conflict in the testimony except in several minor incidents developed on cross-examination.

The testimony offered by respondent on this question was not denied by a single witness called on behalf of petitioners. The District Judge made specific findings of fact (R. 975) that the public officers charged with the duty of protecting respondent's property were unwilling or unable to furnish adequate protection.

The Circuit Court of Appeals affirmed that finding in its opinion (R. 1028), and summarizes the evidence, to which respondent refers for the statement of facts on that question. These findings of the lower courts were supported by substantial evidence.

The brief of petitioner does not accurately and adequately set forth the facts with reference to the efforts of respondent to settle a labor dispute with the petitioners.

In October, 1940, as a result of elections held with the consent of respondent, the Brotherhoods became the repre-

sentatives of the train service employees of respondent. These elections were duly held under the Railway Labor Act and supervised by a mediator of the National Mediation Board.

At all times sub equent to the selection of the Brother-hoods as representatives of the train service employees, respondent recognized and negotiated with these representatives for the men, and with no other persons (R. 775).

The purpose of these negotiations was to negotiate a contract with the Brotherhoods representing train service employees. No contract with the Brotherhoods existed prior thereto for many years.

On November 21, 1941, after both parties to the dispute had refused to arbitrate, the Mediation Board terminated its mediation efforts in the manner prescribed by the statute. (Title 45, U.S.C.A., Sec. 155.) The mediator left Peoria, and mediation proceedings were terminated in the manner prescribed by statute. Following that date, respondent urged the Mediation Board, by exchange of telegrams, to recommend the appointment of an emergency board to be appointed by the President, as provided in the Railway Labor Act, but this was not done.

No further mediation was had, and the statement in brief (page 3) that "negotiations were resumed, but an agreement was not reached" is untrue, and is not in any way supported by any evidence in the record.

Petitioners offered no evidence upon the trial, oral or documentary, in any way contradicting the testimony of respondent's witnesses who had attended all conferences and negotiations between the parties from October, 1940, to November 7, 1941; this evidence shows a full compliance by respondent with regard to the mediation proceedings. A clear statement of the facts on this question is made in the opinion of the Circuit Court of Appeals (R. 1030-1031).

A further discussion on this point will follow in the argument.

STATEMENT OF POINTS IN RESPONDENT'S ARGUMENT.

I.

Petitioners' contention that the District Court improperly extended the temporary restraining order, keeping it in force for more than five days, is now moot.

The temporary restraining order, as extended, expired when the temporary injunction was issued and prior to the notice of appeal.

II.

The trial of the application for temporary injunction was begun before the expiration of the temporary restraining order, and the court had power to extend such order during the progress of the trial with notice to petitioners and their counsel who were there participating in the trial.

Section 7 (Sec. 107, Title 29, U.S.C.A.) of the Norris-LaGuardia Act relates only to temporary restraining orders entered without notice.

Both of the extensions were made after notice and a hearing, to preserve the *status quo* of the property during the hearing of the application for a temporary injunction.

The temporary restraining order was merged in the temporary injunction.

III.

Original jurisdiction in law and equity cases was vested in the District Court by Congress by Title 28, U.S.C.A., Sec. 41 (8), in all suits and proceedings arising under any law regulating commerce.

The complaint upon its face shows that the injunction prayed for was to restrain petitioners from committing acts of violence and threats of violence, thereby interfering with and preventing the transportation of interstate commerce, and the discharge of the obligations of respondent as an interstate carrier to furnish interstate transportation as required by the Interstate Commerce Act. Section I (4), (6), (11), (18), (19), (20), Title 49 U.S.C.A.

The District Court had original jurisdiction without regard to diversity of citizenship or the amount involved, because all the issues are federal questions relating to interstate commerce.

The District Court had jurisdiction under the Railway Labor Act (Title 45 U.S.C.A., Sec. 151-160) because it is therein provided that all interstate common carriers by railroad are included within the provisions of that Act.

The right asserted by respondent to be free from violent interference of its business as an interstate carrier is created by the Fedéral Constitution and statutes, and not by the state law, and the determination of the result of the case depends upon the construction and application of the Federal Constitution and statutes.

Congress in passing the Interstate Commerce Act in 1887, and by the amendments thereto, assumed exclusive jurisdiction in determining the duties and obligations of carriers of interstate freight.

IV.

The clear and conclusive evidence offered by respondent shows that the public officers charged with maintaining order were unable or unwilling to furnish adequate protection for respondent's employees and its property against the violence and threats of violence of petitioners.

The District Court made a specific finding of fact (R. 975), that the evidence proved the failure, inability or unwillingness of the public officers to furnish adequate protection to the property of respondent, and the movement of its trains, and the Circuit Court of Appeals has concurred in that finding (R. 1028-1029), and these findings, not shown to be plainly erroneous or unsupported by substantial evidence, are, under the well established rule, accepted by this Court as unassailable.

V

The undisputed evidence offered by respondent shows that it complied with all the obligations imposed upon it by the Railway Labor Act, and by Section 8 (Sec. 108, Title 29 U.S.C.A.), Norris-LaGuardia Act.

The District Court made a specific finding of fact (R. 970) that the evidence of respondent proved that respondent by negotiation and mediation complied with the provisions of the Railway Labor Act, and all other laws relating to labor disputes, in an honest effort in good faith to reach an agreement with the Brotherhoods, and the Circuit Court of Appeals concurred in that finding (R. 1029-1031).

Neither the Railway Labor Act nor the Norris-LaGuardia Act required respondent to submit to compulsory arbitration to show a compliance entitling it to injunctive relief; respondent fully complied in good faith with all requirements of laws relating to labor disputes by negotiation, mediation and the request for the appointment of an emergency board.

Respondent made no change in its rates of pay, rules and working conditions until more than thirty days after the termination of the mediation proceedings by the National Mediation Board, and in that respect fully complied with Section 5 (Sec. 155, Title 45 U.S.C.A.), Railway Labor Act.

The District Court and the Circuit Court of Appeals concur in findings of fact that petitioners were guilty of violence and threats of violence in obstructing the transportation of interstate freight; and the provisions of Section 8 (Sec. 108, Title 29 U.S.C.A.), Norris-LaGuardia Act do not apply where acts of violence and threats of violence and destruction of property are committed by employees.

The findings of the District Court and the Circuit Court of Appeals that respondent was not required to arbitrate is in accordance with the first paragraph of Section 7 (Sec. 157, 45 U.S.C.A.), Railway Labor Act, which provides:

"Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: Provided, however, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise." (Italics ours.)

Such findings also complied with the provisions of Section 8 (Sec. 108, Title 29, U.S.C.A.), Norris-LaGuardia Act, which provides:

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." (Italics ours.)

ARGUMENT.

I.

Petitioners' contention that the District Court improperly extended the temporary restraining order, keeping it in force for more than five days, is moot.

Respondent submits that the action of the District Court in extending the temporary restraining order, after notice to petitioners and their counsel, beyond the original period of five days is not now an issue to be considered by this court because such question has become moot.

The temporary restraining order entered without notice was limited to a period of five days, expiring January 8, 1942 at 3:50 o'clock p.m. The hearing on the application for temporary injunction was in progress and the court at 2:15 o'clock p.m. on that date, having determined that the hearing could not be completed before the expiration of such order, after notice to petitioners and their counsel, entered an order extending the temporary restraining order until January 17, 1942 at 3:15 o'clock p.m. (R. 66-67) to preserve order and prevent violence until the hearing could be completed and a decision rendered on the application for temporary injunction. The hearing on the application for temporary injunction not having been completed on January 16, 1942, the District Judge entered a further order extending and continuing in force the temporary restraining order until five o'clock p.m. on January 19, 1942, which said order was entered after notice to petitioners and their counsel, the order reciting the reasons therefor (R. 965-966).

The temporary restraining order, as extended, expired January 19, 1942 at 5:00 o'clock p.m. In the meantime

the hearing on the application for temporary injunction had been completed and the District Court filed the findings of fact and conclusions of law, and entered the temporary injunction order (R. 970-982).

No motion was made to dissolve the temporary restraining order. The appeal was filed February 17, 1942, long after the expiration of the temporary restraining order and the orders continuing it in effect until January 19, 1942.

The temporary restraining order, as extended, having long since expired and, as we shall hereafter show, having merged into the temporary injunction, cannot now affect any rights of petitioners. No order can be entered now which could in any way benefit petitioners with respect to the temporary restraining order.

In the case of United States v. Pan-American Commission (D.C.S.D., N.Y., 1918) 261 F. 229, Mr. Circuit Judge Hough said, 231:

"That equity case is 'moot' in which no decree consistent with both pleadings and existing facts will benefit any party as against the other parties to the litigation:"

In the case of *Thompson* v. *Texas Products Co.* (Ct. of Civil Appeals of Texas), 115 S.W. 2d. 1195, it appeared that a temporary restraining order was made returnable on February 28, 1938. An appeal was taken and the case submitted to the Court of Appeals on the 3rd day of March, 1938, and decided March 31, 1938. The court sustained a motion to dismiss the appeal on the ground that the issues involved had become moot.

In the case of Edd v. Home Owners Loan Corporation (S. Ct. of S. Dak.), 291 N.W. 573, the court said; 574:

"The order having expired by its own terms, the question presented on this appeal has become moot, and the appeal is dismissed without costs to either party." In the case of Motor Securities Corp. v. Jones (Civil Court of Appeals of Texas), 90 S.W. 2d. 858, the court at page 859 quoted from the case of McNeil et al. v. Hubert, 119 Texas 18, 23 S.W. (2d) 331, 333, as follows:

"A case becomes moot when it appears that one seeks to obtain a judgment upon some pretended controversy when in reality none exists, or when it seeks judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then existing controversy."

To the same effect see Wallace v. McClendon (S. Ct. of Okla.), 289 Pac. 354; Thoening v. City of Adams, 236 Wisc. 319, 294 N.W. 826, 827, citing Ex parte Steele, D.C. 1908, 162 F. 694.

In the case of Bunning v. Commonwealth (Ct. of Appeals, Ky.), 197 S.W. 542, the court said, page 543, quoting with approval from Potter v. Yonts, 172 Ky. 130, 188 S.W. 1059:

"It is not, however, within the province of appellate courts to decide abstract, hypothetical or moot questions, disconnected from granting of actual relief, or from the determination of which no practical relief can follow."

Respondent respectfully submits that no practical effect can be had by petitioners or others by the court considering the granting of the extension orders. The orders expired by their own terms.

Petitioners say that contempt proceedings may be based upon violation of such temporary restraining order. No such proceedings have been instituted and none will be. The only contempt proceedings instituted are based upon a violation of the temporary injunction (R. 985-986, 987-989).

Under point I of petitioner's brief (9-10) it is stated that contempt proceedings were instituted in the District Court, trials had and defendants found guilty, and that the District Court imposed sentences but ordered that they should not be executed until thirty days after final determination by this Court of this case. The record discloses that the orders or rule to show cause were based upon violation of the temporary injunction (R. 985-989).

There is nothing in the record with reference to the trial or sentence in any contempt case. The statement of counsel for petitioners that certain of their clients were convicted of contempt of court is clear evidence of the necessity of the granting of the temporary injunction restraining petitioners from threats of violence and acts of violence.

On pages 10, 11, 12 and 13 of petitioners' brief reference is made to the Executive Order of the President of March 21, 1942, being No. 9108, and an order of the District Court assessing fines against certain violators of the temporary injunction and the extension of time within which to pay such fine. None of these matters are shown in the record now before the Court. Respondent respectfully submits the argument of petitioners' counsel with reference to such matters should have no effect and should not be considered in the decision of the issues in this case.

Counsel for petitioners also (Br. 13-20) argue that the issues in this case are not moot because there is a possibility of liability upon the temporary injunction bond which may be affected by a decision upon the merits. Respondent respectfully submits that there is no issue in this appeal which requires a decision upon such question.

The District Court properly extended the temporary restraining order after notice during the hearing of the application for temporary injunction, and the temporary restraining order was merged in the temporary injunction.

Section 7 (Sec. 107, Title 29 U.S.C.A.) of the Norris-LaGuardia Act relates only to orders entered without notice. Congress did not limit the District Court's jurisdiction to enter restraining orders in labor disputes in excess of five days where there was notice or a hearing.

Both orders extending and continuing in force the temporary restraining order were entered with notice to petitioners and their counsel, who were present in court at the time of the entry of each order. These orders specifically recite the reasons for entering the same (R. 66-67, 965-966), viz., to protect employees and property of respondent while the court was bearing the application for temporary injunction, and were made with full notice to petitioners and after a hearing, and objections thereto in open court (R. 66-68, 965-966).

The opinion of the Circuit Court of Appeals (R. 1022-1023) clearly shows the purpose and intent of Section 107, Title 29 U.S.C.A. and the necessity as a practical application of the law of extending and keeping in force the temporary restraining order until the completion of the hearing and decision on the application for a temporary injunction. If the Court had not extended the effect of the temporary restraining order during the hearing there would have been a period of more than a week during which petitioners, if unrestrained, might have caused further irreparable damage.

The contempt proceedings were instituted for violation of the temporary injunction (R. 985-6, 987-8, 988-9).

In addition thereto the temporary restraining order was merged in the temporary injunction as specifically held in City of Reno v. Sierra Pacific Power Co., 44 F. (2d) 281-283 (CCA 9th Circuit) and by the Circuit Court of Appeals in this case (R. 1023).

Petitioners (Br. 21) say that if the restraining order was void between January 8, 1942 and January 19, 1942, it will not sustain contempt proceedings that may be brought, and the issue is alive and should be determined by this Court. In reply to this statement, respondent says that no contempt proceedings have at any time been instituted by respondent for violation of the temporary restraining order or for violation of either of the extensions thereof, and none will be instituted.

III.

The complaint shows upon its face that the injunction prayed for was to restrain petitioners from committing acts of violence and threats of violence, and thereby interfering with and preventing the transportation of interstate commerce and the discharge of the obligations of respondent as an interstate carrier to furnish interstate transportation. The District Court had jurisdiction of the subject matter because all of the issues involved federal questions.

The complaint of respondent alleged facts showing that it was an interstate common carrier of freight by railroad subject to the provisions of an Act entitled, "An Act to Regulate Commerce," and acts amendatory and supplementary thereto, Title 49 U.S.C.A., and the Transportation Act of 1920, as amended, Title 49 U.S.C.A., and as a common carrier subject to the Railway Labor Act, Title 45

U.S.C.A., Sections 151-160, the War Utilities Act, Title 50 U.S.C.A., Sections 101, 102, 103, 104 & 105 (R. 4), and that jurisdiction of the court was invoked because of the rights given it by the Constitution and Laws of the United States (R. 28).

Under Section 1 (4) of the Interstate Commerce Act it is the duty "of every common carrier . . . to provide and furnish . . transportation . . to establish through routes * * and to provide reasonable facilities etc.; under Section 1 (6), "to establish . . facilities for transportation . , which may be necessary or proper to secure the safe and prompt receipt, handling, transporting and delivery of property * * * "; under Section 1 (4) "to provide and furnish transportation upon reasonable request therefor * * * to provide reasonable facilities for operating such routes"; under Section 1 (11) "to furnish a safe and adequate car service"; under Section 1 (18) ... • • no carrier by railroad subject to this Chapter shall abandon all or any portion of a line of railroad or the operation thereof, unless and until there shall have first been obtained from the Commission a certificate that the present or future public convenience permits such abandonment"; under Section 1 (20) it is provided "any * abandonment contrary to the provisions of this Paragraph (or Paragraphs 18 and 19 of this Section) may be enjoined

By Section 151, Title 45, U.S.C.A., it is provided that all interstate common carriers are included within the provisions of the Railway Labor Act. That Act applies only to interstate common carriers by railroad under the jurisdiction of the Interstate Commerce Commission and subject to the Act to Regulate Commerce.

Section 41 (1), 28 U.S.C.A., provides that District Courts shall have original jurisdiction "of all suits of a civil nature, at common law or in equity, • • • (a) • • under

the Constitution or laws of the United States * * "; and sub-section (8) provides "all suits and proceedings arising under any law regulating commerce."

In Peyton v. Railway Express Agency, 316 U. S. 350, at 353, 62 S. Ct. 1171, at 1173, this court said:

"Whether a suit arises under a law of the United States must appear from the plaintiff's pleading, not the defenses which may be interposed to, or be anticipated by it. Petitioner's pleading, which we have summarized, satisfies this requirement since it adequately discloses a present controversy dependent for its outcome upon the construction of a federal statute," (Citing cases).

If the plaintiff makes a substantial claim under an Act of Congress, there is jurisdiction whether the claim ultimately be held good or bad. Louisville & Nashville Railway Company v. Rice, 247 U. S. 201; 38 S. Ct. 429.

The District Court necessarily was required to construe the duty and obligations of respondent under the federal law known as "An Act to Regulate Commerce" and Acts amendatory thereof, and the Transportation Act, as amended. It was also required to construe and determine the obligations and duties, rights and privileges of respondent under the terms of the Railway Labor Act, Title 45, U.S.C.A., Sections 151-163, and the Norris-LaGuardia Act, Title 29, U.S.C.A., Sections 101, 108. All the rights and privileges, duties and obligations, of the parties to this suit depended upon the proper construction and application of the aforesaid Acts of Congress and the Constitution and laws of the United States.

The opinion of the Circuit Court of Appeals in this case: (R. 1020-1031) clearly analyzes the rights and duties of respondent under the Interstate Commerce Act, and the other federal statutes (R. 1024-1028). The court also

quotes from Title 18, U.S.C.A., Sec. 412 (a) (R. 1025-1026), which makes violent interference with such commerce criminal acts.

The decision of the Circuit Court of Appeals is fully supported by the authorities cited in its opinion (R. 1027, 1029, 1030).

The complaint avers that respondent was operating under and bound by the terms and provisions of the Railway Labor Act (R. 4), and petitioners, in paragraph 3 of their answer, admit this allegation (R. 992-993).

The District Court could not decide this case without construing the provisions of the Railway Labor Act, especially those questions relating to whether or not respondent had made every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or volunta v arbitration.

Section 7 of the Railway Labor Act (May 20, 1926), 44 Stat. 582, Section 157, Title 45 (U.S.C.A.) provides that "failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise." This provision of the Railway Labor Act is directly involved in this decision by the contention of petitioners that notwithstanding the express provision of that statute respondent was obliged to submit to compulsory arbitration. This assertion made by petitioners as a part of their defense, that respondent did not comply with its statutory duty by refusing to arbitrate, raised a question as to the construction of the Railway Labor Act as applied to the issues in this case, and the trial court decided this question upon the basis of decisions of this court in the Clerks and the Virginian cases. (281 U.S. 548, and 300 U.S. 515, hereinafter referred to.) (R. 954-955).

This Court recognized the equity jurisdiction of federal courts in the following two cases where it considered the constitutionality of the Railway Labor Act, namely: Texas & N. O. R. Co. et al. v. Brotherhood of Railway and S. S. Clerks, 281 U. S. 548, 50 S. Ct. 427, and Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592. In each of these cases this court sustained a decree for temporary injunction in favor of employees who were bound by that Act, and enjoined the carrier from the violation of certain provisions of the Act.

The first case was decided after the original Railway Labor Act was passed in 1926, the second in 1937 after the Act was amended in 1934, and after Section 8 (Sec. 108, Title 29, U.S.C.A.) of the Norris-LaGuardia Act was passed by Congress in 1932.

In Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, at 550, 57 S. Ct. 592, at 60, Mr. Justice Stone, speaking for the court upon the question of the jurisdiction of a federal court of equity to entertain a suit for injunction and the propriety of relief under the provisions of the Act, said:

"Whether an obligation has been discharged and whether action taken or omitted is in good faith or reasonable, are every day subjects of inquiry by courts in framing and enforcing their decrees."

Also, in 300 U. S. 552, 57 S. Ct. 602, this court said:

"The decree is authorized by the statute and was granted in an appropriate exercise of the equity powers of the court."

If the federal courts have original jurisdiction to entertain a suit by the employees to enjoin the employer (as recognized by this court in the above cases), then the court has jurisdiction to entertain a suit in equity brought by the employer (the railroad) where the subject matter of the suit arises under the Railway Labor Act, and involves the mutual duties and obligations of the railroad and the employees in a labor dispute.

The original Interstate Commerce Act was passed by Congress in 1887, and the first case involving the construction of the Act, so far as it relates to the duties and obligations of an interstate carrier, was decided on April 3, 1893, by Judge William H. Taft, then a Circuit Judge (later Chief Justice of this court). This was Toledo, Ann Arbor & North Michigan Ry. Co. v. Pennsylvania Co., 54 Fed. 730 (and a companion case in the same volume at 746). Judge Taft, in granting a temporary injunction restraining several railroad defendants and their employees in a labor dispute from refusing to handle cars containing interstate traffic tendered by plaintiff, at page 732 said:

"The jurisdiction of this court to hear and decide the case made by the bill cannot be maintained on the ground of the diverse citizenship of the parties, for the complainant and at least one of the defendants are citizens of the same state. If it exists, it must arise from the subject matter of the suit. The bill invokes the chancery powers of this court to protect the complainant in rights which it claims under the Act of Congress passed February 4, 1887, (24 St. at Large, P. 379) known as the 'Interstate Commerce Act,' and an Act amending it passed March 2, 1889, (25 St. at Large, P. 885). These Acts were passed by Congress in the exercise of the power conferred on it by the federal constitution (Article I, Sec. 8, Para. 3) 'to regulate commerce with foreign nations, among the several states, and with the Indian tribes'. Counsel for defendant Arthur contend that the interstate commerce law, and its amendments are only declaratory of the common law, which gave the same rights to

complainant, and that, therefore, this is not a case of federal jurisdiction. The original jurisdiction of this court extends by Act of Congress passed August 13, 1888, (25 St. at Large, P. 443) to 'all suits of a civil nature, at common law or in equity, arising under the constitution or laws of the United States. It is immaterial what rights the complainant would have had before the passage of the interstate commerce law. It is sufficient that Congress, in the constitutional exercise of power, has given the positive sanction of federal law to the rights secured in the statute, and any case involving the enforcement of those rights is a case arising under the laws of the United States."

There was a violation of this injunction, and contempt proceedings were instituted resulting in the imprisonment of one Lennon. Lennon filed a petition for writ of habeas corpus, which was decided by the Circuit Court for the Northern District of Ohio, and the order of contempt affirmed. Lennon appealed from that order direct to this court, where the appeal was dismissed. (150 U. S. 393; 14 S. Ct. 123.)

Lennon then appealed the contempt order to the Circuit Court of Appeals for the Sixth Circuit, where the decree of the lower court was affirmed. Certiorari was granted by this court, and on hearing here it was held that Judge Taft had jurisdiction to enter the original decree for injunction, and Mr. Justice Brown in that case, Ex parte Lennon, 166 U. S. 548, 17 S. Ct. 658, at 660, said:

under the constitution and laws of the United States, as it appears to have been brought solely to enforce a compliance with the provisions of the interstate commerce act of 1887, and to compel the defendants to com-

ply with such an act, by offering proper and reasonable facilities for the interchange of traffic with complainant, and enjoining them from refusing to receive from complainant, for transportation over their lines, any cars which might be tendered them. It has been frequently held by this court that a case arises under the constitution and laws of the United States whenever the party plaintiff sets up a right to which he is entitled under such laws, which the parties defendant deny to him; and the correct decision of the case depends upon the construction of such laws."

At pages 26 and 27 of the brief, petitioners discuss the decision of this court in the Lennon case, and state that it was decided almost a half century before the Norris-La-Guardia Act, which prohibits an injunction to compel employees to work under any circumstances. This Court in the Lennon case did not pass upon the question as to whether it had power to compel the performance of a contract for service, as inferred by petitioners here (pp. 18, 19). But this Court did decide the question of jurisdiction of the federal courts to entertain a suit for injunction upon the basis that Congress imposed upon interstate carriers the duty to furnish reasonable facilities for the interchange of interstate traffic, and that the acts of the defendants in that case directly affected a right and duty of the carrier arising under the Commerce Act.

In instant case respondent at no time has asserted that any court has jurisdiction to compel an employee to continue in service or to perform any service, as that would be contrary to the express provisions of the Railway-Labor Act. The injunction in instant case expressly limits its effect to the interference with interstate traffic by the striking employees as a result of their violent acts or threats of violence, and the court clearly stated, not only in his oral opinion in deciding the case, but in the order

for injunction, that it had no effect whatsoever upon petitioners' right to strike or their right to refuse to work (R. 981).

It is said in the brief (P. 27) that the Lennon case was completely different from this case because it was bottomed on the statutory violation by the defendants in refusing to accept interstate freight, and that the purpose of that suit was to force acceptance of freight. Petitioners recognize by their argument that Congress did impose obligations upon interstate carriers, the violation of which give the federal courts jurisdiction in equity cases. A careful analysis of the issues in instant case will demonstrate that the fundamental principle in this case, and in the Lennon case, is exactly the same.

It was the duty of respondent under the Commerce Act to deliver freight and furnish reasonable facilities for the interchange of interstate freight with other carriers. The complaint here shows, and the evidence proves, that respondent was prevented on many occasions, specifically described by the testimony of the witnesses, in making delivery of interstate freight to other carriers, due to the fact that petitioners, not by refusing to work, but by force and violence, and by threats of force and violence, prevented respondent from making these deliveries and to perform its duties and obligations.

The purpose of the present action was simply to forbid striking employees (petitioners) from interfering with the movement of interstate freight by reason of their acts of violence and threats of violence. The decree in this case granting the temporary injunction in nowise violates either the letter or spirit of the Norris-LaGuardia Act, and it in no way interferes with the right of petitioners to strike. It does not in any way seek to compel them to continue to work under any circumstances.

What has been said above with reference to the Lennon case applies equally to the comment of petitioners on Wabash Co. v. Hannahan, 121 Fed. 563, and the other cases which they discuss. Petitioners are incorrect in assuming as a basis for the argument with reference to these cases, that the injunction in instant case was granted to restrain the Brotherhood leaders and employees from striking for a wage increase, or that the injunction was contrary to the letter and spirit of the Norris-LaGuardia Act.

No Federal Court has yet held that an injunction may not be granted restraining an employee from violence and threats of violence, so long as that striking employee's rights to strike are not interfered with by the writ. That is all that the Norris-LaGuardia Act attempts to accomplish, namely: that there shall be no injunction restraining rights of employees to strike, or interfering with their union activities. The Court, having protected these fundamental rights, then has the right and power to prevent violence and threats of violence against the employer.

The order in instant case from which the appeal was taken, expressly reserves all of the rights guaranteed to an employee by the Norris-LaGuardia Act, and these rights are clearly and specifically set out in the order for temporary injunction (R. 981-982).

In Macon Gracery Co. v. Atlantic C. L. R. Co., 215 U. S. 501, 30 S. Ct. 184, at 186, 187, this Court approved the rule announced in the above case by Judge Taft.

In Mulford v. Smith, 307 U.S. 38, at 46, 59 S. Ct. 648 at 651, this Court speaking through Mr. Justice Roberts said, page 46:

"Before coming to the merits we inquire whether the court below had jurisdiction as a federal court or as a court of equity. Though no diversity of citizenship is alleged, nor is any amount of controversy asserted so as to confer jurisdiction under sub-section (1) of Section 24 of the Judicial Code, the case falls within sub-section (8) which confers jurisdiction upon District Courts 'of all suits and and proceedings arising under any law relating to commerce.'"

In the recent cases of Southern Pacific Co. v. Peterson and A. T. & S. Fe Ry. Co. v. same, 43 F. (2d) 198, the court said at 201:

"If, as alleged in the bills, the interstate traffic over the plaintiffs' lines is hindered, delayed and burdened to such an extent as to amount to an unlawful interference with or regulation of interstate commerce, then a cause of action exists calling for equitable relief. These allegations of the bill are specifically denied by the defendant. An issue is thereby tendered and a case presented of which the federal court has jurisdiction."

In the case of The Fair v. Kohler Die & Specialty Co., 228 U. S. 22, at 25, 33 S. Ct. 410, at 412, the Court said:

"" • if the plaintiff really makes a substantial claim under an Act of Congress, there is jurisdiction whether the claim ultimately be held good or bad."

The petitioners in their brief (Pgs. 30-31) have misconstrued the effect of the decision of the Circuit Court of Appeals. In effect they say that if a federal statute imposes a duty upon a person, that judicial interpretation may read into that statute a provision that such person has an implied federal right to be free from any act tending to obstruct or prevent the performance of that duty, and a federal court will hear cases seeking remedies for a breach of such an implied right.

In the first place, the premise from which this argument stems has no application to instant case. The rights and duties of an interstate carrier are in no way implied. These rights have been definitely fixed by statutory enactment beginning with the passage of the original Interstate Commerce Act in 1887. In the second place, petitioners overlook the fact that the Constitution of the United States gave power to Congress to regulate interstate commerce, and Congress entered the field of regulation of commerce between the States when it passed the act of 1887, and by so doing excluded all interference by a state in that field.

All of the cases above cited show that the federal courts have recognized that Congress, by the passage of the Interstate Commerce Act in 1887, took exclusive jurisdiction in determining the duties and obligations of carriers of interstate freight, and no court, State or Federal, has ever held that any of the duties and obligations of carriers under that Act are subject to state legislation or regulation by a state.

In Railroad Commission v. Worthington, 225 U. S. 101, 32 S. Ct. 653, at 655, this Court said:

"It is not necessary to review the cases in this court" which have settled beyond peradventure that the national government has exclusive authority to regulate interstate commerce under the Constitution of the United States."

Petitioners at pages 30 and 31 of their brief discuss the large volume of litigation in state courts resulting from automobile negligence cases, and say that federal law imposes upon common carriers by truck the duty to furnish transportation and facilities, and conclude with the unwarranted assertion that under the reasoning of the Circuit Court of Appeals in instant case a trucker would have a federal right to be free from any act obstructing or impeding the movement of the truck, and a remedy in the federal courts for his damage.

This argument is unsound, and is completely answered by the decision of the Circuit Court of Appeals of the Seventh Circuit in Sharp v. Barnhart, 117 F. (2d) 604, in the opinion by Judge Evans, which case involved the stoppage of a motor truck. In this opinion, Judge Evans very clearly draws the distinction between the right of the operator of a truck engaged in interstate commerce and one which is under the terms and provisions of the Motor Carrier Act of Congress, and there points out that the operation of motor vehicles on the public highways of the State are subject to the local supervision and local laws with reference to the operation of said vehicle. Also see Welch Co. v. New Hampshire, 306 U. S. 79, at 85, 59 S. Ct. 438, at 441; 83 L. Ed. 500, and the cases there cited.

A motor truck is operated upon a public highway which is used by the public generally either for the purpose of hauling interstate freight, intra-state freight or the operation of private motor cars, and Congress by passing the Motor Carrier Act of 1935, 49 U.S.C.A. 301 et seq., did not intend to supersede or suspend the exercise of the reserve powers of a State in controlling all traffic upon public highways, and the Motor Carrier Act was not extended to cover ordinary traffic safety regulations, but these regulations were left to the State.

The distinction between the Interstate Commerce Act as applied to railroads, and the Motor Carrier Act of 1935, is one of the scope of assumption of authority and control by Congress. Under the Interstate Commerce Act, Congress assumed and has retained the exclusive field, to regulate and control, while in the Motor Carrier Act, Congress has taken jurisdiction only in a limited manner:

Under all of the decisions of this court and the Circuit Courts of Appeal, the distinction here made has been recognized, and the federal courts are vested with jurisdiction in cases arising in this exclusive field of interstate transportation by railroads.

The concern of counsel for petitioners that the decision of the Circuit Court of Appeals in instant case will result in clothing federal courts with further power to consider a great volume of motor vehicle cases is unfounded and unwarranted. As pointed out by Judge Evans in Sharp v. Barnhart, 117 F. (2d) 604, the federal courts are vested with jurisdiction in motor carrier cases only where the vehicle owner has fully complied with the provisions of the Federal Act, and as he so clearly states in that opinion, the motor vehicle carrier, even though transporting interstate commerce, is not under the protection of the federal courts if he has not brought himself within the qualifications required by that Act.

Under all the above cases and the facts alleged in the complaint in this case and proven on the trial, it clearly appears that this suit really and substantially involved a dispute or controversy respecting the construction or effect of the Interstate Commerce Act, the Transportation Act, the Railway Labor Act, the War Utilities Act, and the Norris-LaGuardia Act, and that the result depended upon such determination by the District Court. Under such circumstances the District Court had original jurisdiction of the controversy.

IV.

The undisputed evidence offered by respondent shows that the public officers charged with maintaining order were unable or unwilling to furnish adequate protection for respondent's employees and its property against the violence and threats of violence of the petitioners.

Respondent, in answer to petitioners' argument under this point, suggests three propositions for consideration, as follows:

1. The findings of the District Court (R. 970-977; R. 981-982), and approved by the Circuit Court of Appeals in its opinion (R. 1027-1029), are binding upon petitioners.

- 2. The concurrent findings of fact of the two courts below are not shown by petitioners to be erroneous or unsupported by substantial evidence, and under the well established rule of this court, these findings are accepted here as unassailable. Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515 at 542, 57 S. Ct. 592 at 596; Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548 at 558, 50 S. Ct. 427 at 429; Alabama Power Co. v. Ickes, 302 U. S. 464 at 477, 58 S. Ct. 300 at 303.
- 3. The plain meaning of the statute (Section 7, Norris-LaGuardia Act) is that respondent was entitled to adequate protection for its property and the safety of its employees, and not merely a pretense of protection, as the evidence in this case shows was the extent of the protection offered or furnished by the public officers charged with the duty of law enforcement.

Upon the trial of this case in the District Court, petitioners made no effort to dispute the voluminous evidence offered by respondent, proving that the striking petitioners were guilty of violence, threats of violence, and interference by violence, with the movement of interstate trains. Not a single witness was called by petitioners to dispute the fact that petitioners in over fifty separate instances did interfere, by violence, with the operation and movement of interstate trains and interstate freight, preventing respondent from the performance of its statutory duty under the Interstate Commerce Act, as an interstate carrier of freight. (See Exhibit 21, R. 702, attached to this brief as an appendix, giving the date and places upon said railroad where respondent's proof shows violent interference with the movement of interstate trains.)

Under this point, petitioners challenge the sufficiency of the evidence to sustain the charge in the complaint that the public officers were unable or unwilling to furnish adequate protection, as provided by Section 7 of the Norris-LaGuardia Act.

The challenge of petitioners is not specific. Petitioners say (Br. 32) that plaintiff's evidence relates to incidents of disturbance and violence on certain days, but that there is no evidence that the police officers and sheriffs were unable to handle any disturbance or situation to which their attention was called, or which came to their notice. The brief of petitioners fails to point out by record references the lack of substantial evidence, and the only references are to immaterial statements of certain witnesses.

This Court has adhered to the rule stated in Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515; 57 S. Ct. 592 at 596, where the Court said:

"The concurrent findings of fact of the two courts below are not shown to be plainly erroneous or unsupported by vidence. We accordingly accept them as the conclusive basis for decision."

Petitioners have not shown that the findings of the District Court and the Circuit Court of Appeals are plainly erroneous or unsupported by evidence. On the other hand, respondent contends that these findings are supported by substantial evidence, and that the rule with reference thereto, as announced in Alabama Power Co. v. Ickes, 302-U. S. 464; 58 S. Ct. 300 at 303, should govern in this case. This Court there said:

"These findings were made, after hearing by the District Judge upon undisputed or conflicting evidence. These findings were not questioned by the court below; and since they are not without substantial support in the evidence, we accept them here as unassailable."

Respondent, therefore, submits that since the District Court made the findings upon evidence which is uncontradicted, except in very minor respects, and the Circuit Court of Appeals has not questioned those findings, that this Court should accept the same as unassailable.

Respondent directs this Court's attention to the fact that the trial judge, after sitting for almost two weeks and hearing one hundred seven witnesses in the case, found against petitioners on this point, and that these findings, supported by substantial evidence, should not be overturned simply because the petitioners make an assertion, without pointing out wherein these findings are plainly erroneous or unsupported by evidence.

The substantial evidence offered by respondent shows that acts of severe violence were committed by petitioners in nine counties in the State of Illinois through which the railroad passes. The most serious acts of violence against respondent's property and its employees occurred in Peoria and Tazewell Counties. The terminal and vards are located in East Peoria. To refute the incorrect statements of petitioners in their brief as to the nature and extent of the violence, respondent here cites the record pages where substantial evidence may be found, showing that the acts complained of were not isolated incidents, as petitioners would have this Court believe, but were the acts of mobs, which, in several instances, stopped interstate trains and brutally assaulted train employees, driving them from their posts upon the locomotive and train. These references are as follows: (R. 81-92, 105-117, 140-144, 166-167, 172-180, 190-199, 202-207, 219-232, 234-240, 241-254, 281-292, 293-302, 326-327, 330-332, 356-360, 361-367, 408-420, 443-459, 463-476, 502-507, 511-520, 521-525, 537-547).

On several occasions, trains passing from the yards in East Peoria through the city, were stopped by mobs, which included a great number of petitioners, who were identified in open court as participants in these acts. On one occasion, at Swords' Siding, switch engine No. 70, with a num-

ber of cars attached (all loaded with interstate freight) was stopped. The engineer and fireman were driven from the engine by the throwing of bricks and stones, and other trainmen were likewise driven from the train (R. 280, 292, 293, 302, 326, 327, 330 and 332). The fireman on that train, Don Dubois, attempted to escape from the mob, and was pursued by several persons, and finally overtaken by one of the petitioners, William L. Brown (R. 293-295), who assaulted Dubois with a gas hose nozzle, and left him lying in an unconscious condition on the street. William L. Brown was identified in open court, and did not testify for himself or the other petitioners. Acts of this character cannot be characterized as incidents of disturbance, as petitioners have attempted to do in their brief.

Several other trains were stopped by mobs, which mobs in each instance included a number of petitioners, all of whom were identified in open court as participants in the acts of violence, and in many instances, these petitioners, notwithstanding their positive identification in open court, failed to testify and deny the facts charged against them.

In the testimony of the following named witnesses, the Court will find that these acts were of the most vicious and violent character. It will also find that the men who committed these dastardly, unlawful assaults upon the trainmen operating the interstate train in question, did not deny their participation therein. (See testimony of the following witnesses: John H. Sweet, R. 140-145; E. P. Owen, R. 172-184; C. L. Carnarius, R. 190-210; E. A. Lawson, R. 241-254; Larry Ward, R. 218 to 232; Omar C. Gulick, R. 462 to 469; E. R. Funk, R. 443 to 459; Harold E. Kipling, R. 408 to 442; L. E. McAvoy, R. 488-494; Leland Ruddell, R. 511-520).

The train referred to in the testimony of the foregoing witnesses was Extra No. 41 West, on January 2, 1942. It was an interstate train carrying important freight, in-

cluding war materials, from Peoria, Illinois, to Keokuk, Iowa (R. 612-614; Exhibits 8 to 18; R. 613-614).

The Sheriff of Peoria County testified that on December 28, 1941 and January 2, 1942, a request was made at his office for protection of the property and men of respondent, and that he informed the president of respondent railroad that he could not protect the respondent and its property in this strike, because he had an inadequate force; that his total force consisted of only six ununiformed men (R. 380-386). He further testified on cross-examination that on January 2, 1942, his office received a call advising that there was a possibility of violence in the vicinity of Hollis, and that some men should be sent to that point to preserve the peace. That request was made before extra No. 41 West above referred to had left the Union Station. The proof further shows that no deputies from the sheriff's office ever appeared or made any arrests or attempted arrests, and that nothing was done that day to protect the property or the men operating that train. The only arrests made on the day in question were by Harold E. Kipling, chief special agent of respondent, who arrested Lucas and Totten, two of petitioners who attempted to destroy the locomotive on extra No. 41. and injure the men in the cab by throwing bottles of inflammable material, which exploded inside the cab, setting fire to it and injuring several of the employees.

On December 20, 1941, Zeno Merrill was assaulted by ten or fifteen men as he was leaving respondent's East Peoria yards, and was seriously injured as a result of the treatment he received at their hands. He swore out warrants for the men he was able to identify, and these were arrested, but immediately released on bond (R. 81, 92, 102-117, 723).

On the morning of December 31, 1941, president of respondent telephoned Sheriff Donahue of Tazewell County,

asking if he would have deputy sheriffs at the entrance to the lane to prevent further trouble (R. 723-724). The sheriff said he would come over and investigate the situation, and would try to have some one at the entrance to the lane on twenty-four hour duty but that, as to preventing trouble, he didn't knew how much could be expected. The sheriff also told the president of respondent that the men arrested for the assault on Merrill were let out almost immediately, and that Judge Donaldson, County Judge of Tazewell County and City Attorney of East Peoria, was representing the Brotherhoods and their members and that, with this set-up, nothing could be accomplished by arresting people, as they would be let out through Judge Donaldson's influence as fast as they were brought in for The Judge Donaldson mentioned by arrest (R. 724). Sheriff Donahue was one of the Attorneys for petitioners in the District Court, and took an active part in the trial (R. 67, 991-999).

Sheriff Donahue came over to the yards of respondent at about 1 o'clock, and the president and general counsel of respondent had a conference with him and Deputy Goar, at which time Donahue repeated his statements about the ineffectiveness of arresting anyone because of the representation of the Brotherhoods and their members, and that the set-up was bad from respondent's standpoint so far as the local authorities were concerned. He further stated that he only had four men to look after the entire county, and that, while he was willing himself to do what he could, respondent must realize what he was up against, and that the aid he could render was necessarily limited (R. 724-725).

The sheriff did not provide protection for respondent or its men in Tazewell County, and no protection was furnished at any time when trains were stoned and interfered with while in Tazewell County (R. 725). On January 2, 1942, a wire was sent to the mayor of East Peoria, along with wires to other officials all along respondent's railroad, asking for assistance. Shortly after sending the wire, Mayor Brauns of East Peoria called respondent's president and said: "George, I am sorry I can not do a thing for you" (R. 725). From that time on protection was furnished respondent's men or property at any time by the mayor's office or the chief of police of East Peoria (R. 725).

On December 31, 1941, when the train crew was assaulted at Swords' Siding in East Peoria, the East Peoria police were called, but they did not arrive until after the train was moved some forty-five minutes later, although a police ar could have reached Swords' Siding from the city hall within five minutes after being notified (R. 725-726).

On January 2, 1942, about 8:30 in the morning, Chief Special Agent Kipling advised respondent's president that an attack was being made on extra 41 west (R. 730). A call was immediately made to the sheriff's office of Peoria County, and Deputy Vespa said he would send a car with officers, but the officers did not arrive until after the assault below Allied Mills had taken place (R. 731). Respondent's president also telephoned the state police, 'advising what had occurred. The deputy reported that he did not know whether they could do anything or not, but that he would call back in five minutes. However, he did not call (R. 731).

Early on the morning of January 2 respondent's president sent wires to the sheriffs of all counties, advising that operations were being seriously interfered with and delayed by acts of violence against train crews, damage and destruction of railroad property and equipment and acts with intent to derail trains, and requested that necessary protection be furnished to prevent such violence and interference with the operation of trains, and requested the

sheriffs to advise by wire collect if they would supply men to protect the operation of trains (R. 732).

No replies were received from the sheriffs of Ford, Tazewell, Peoria, Fulton, Hancock or Henderson Counties, and the sheriffs of Iroquois, Livingston, McLean and McDonough advised that they had no funds with which to give protection (R. 734). The sheriff of Woodford County was the only sheriff replying indicating that he would endeavor to give protection (R. 734).

Respondent's president also, on the morning of January 2, sent similar wires to the mayors of all towns located upon its railroad (R. 734). Most of the replies received advised that they were unable to give the protection requested, and no assistance was received from any of the cities where violence occurred. (See testimony of George P. McNear, Jr. (R. 720 to 752).)

Chief of Police Wright of East Peoria was called by Superintendent Best when a P. & P. U. crew reported that they were prevented from making delivery of cars to respondent. Chief Wright advised Best that he could not guarantee ample protection, and that his two men had no show with forty or fifty pickets (R. 757, 759).

In considering this point, the court should take into account the fact that the railroad extends from Keokuk, Iowa, to Effner, Indiana, across the State of Illinois, and that the strikers could make an attack upon the trains at many points along the public highways crossed by the railroad tracks, and that it would be very difficult for police officers to cope with that situation (R. 700—Exhibit 21).

An examination of the substantial testimony offered in support of the complaint, to be found at the places in the record above referred to, will disclose that the character of the pretended protection that the public officers in one or two instances said they would furnish, was not the ade-

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quate protection which Congress provided in the Norris-LaGuardia Act, Section 7, the owner of property should have. The refusal or failure of the public officers, to whom appeal was made to protect the property and men of respondent, is clearly apparent from the record.

It should also be noted that the Circuit Court of Appeals also found (R. 1026) and stated the facts on this subject, as follows:

"In instant case, the acts complained of were so violent that plaintiff was forced to abandon temporarily its train service."

It should also be noted, in support of the findings of fact on this point, that the Circuit Court of Appeals, as well as the District Court, found that the acts of violence and threats of violence upon respondent were spread over the entire distance of the length of the railroad from the State of Iowa to the State of Indiana. Under such circumstances, even though a sheriff in one of the eleven counties in Illinois in which this road operates was entirely willing to cooperate within his jurisdiction, viz, his county, his protection even though effective there, would be of no consequence in the other ten counties in the state through which the railroad was operating.

In Newton v. Laclede Steel Co., 80 Fed. (2d) 636 (7th Circuit), December 17, 1931, the court held that the term "public officials" includes the city and county officials, but not the Governor of the state.

The facts in the record in instant case present a more serious condition than existed in Lake Valley Farm Products v. Milk Wagon Drivers' Union, Local #753, 108 Fed. (2d) 436 (C.C.A. 7th, Nov. 1939), where that court said:

"With respect to the ability of the police officers to cope with the situation, we think it is clear from the number of stores involved, and the magnitude and seriousness of the activities which had continued for several years, that the police officers were unable to control the situation." (Italics ours.)

In Cater Construction Co. v. Nischwitz, 111 F. (2d) 971 (C.C.A. 7th, 1940) that court said that the Norris-La-Guardia Act contemplates protection which would enable an owner to proceed with the work, or with his business. That decision applies in instant case, because the proof shows that the lack of protection from the public officers prevented respondent from proceeding with the operation of its trains. The undisputed proof is that there was a total cessation of operation of all its trains by reason of the violence, on January 2, 1942, and that this cessation of operation continued until after the granting of the restraining order, and the service of the same upon the petitioners.

The situation, as disclosed by the evidence in this case, is comparable to the facts in *United Electric Coal Co. v. Rice*, (C.C.A. 7th, 1935) 80 F. (2d) 1, in which case the Seventh Circuit Court held that the Norris-LaGuardia Act (28 U.S.C.A. 108) limiting the power of a federal court of equity to grant injunctions in labor dispute cases, does not prevent the court from protecting property from wilful destruction. This court denied certiorari in that case. (Rice v. United Electric Coal Co., 297 U. S. 712; 56 S. Ct. 590.)

At page 33 of petitioners' brief, they refer to Arkansas v. Kansas & Texas Coal Co., 183 U. S. 185 at 188; 46 L. Ed. 144-146; 22 S. Ct. 46, and cite that case as an authority in support of their contention. An examination of that case will disclose that it has no bearing whatsoever upon the issues here presented. That case did not involve the question of interstate commerce. The State of Arkansas filed

a suit for injunction to enjoin the coal company from importing large bodies of armed persons into the State of Arkansas, and it was contended that these persons were lawless or riotous persons, or ones affected with contagious or infectious diseases that might endanger the peace, good order or good health of the state, or create a public nuisance. Mr. Justice Fuller, in the opinion, says:

"In this case the state (plaintiff) asserted no right ander the Constitution or laws of the United States, and put forward no ground of relief derived from either. There was no averment on which the state could have invoked the original jurisdiction of the Circuit Court, under Section 1 of the Act • • ."

A careful consideration of that case will disclose that none of the issues there involved had any relation to a efederal question.

Both the District Court and the Circuit Court of Appeals have found that the record here contains substantial evidence showing the public officers under duty to protect respondent were either unable or unwilling to furnish adequate protection. Under the authorities above cited, such concurrent findings of fact, not being shown to be plainly erroneous or unsupported by evidence, are accepted as conclusive. These findings show respondent's complete compliance with the requirements of Section 7 (107, Title 29, U.S.C.A.) of the Norris-LaGuardia Act.

V

The undisputed evidence offered by respondent shows it complied with all the obligations imposed upon it by the Railway Labor Act, and Section 108 of the Norris-La-Guardia Act. The findings of the District Court on this point, approved by the Circuit Court of Appeals, are supported by substantial evidence.

On the question as to whether respondent had complied with the provisions of the Railway Labor Act as a condition to its right to seek injunctive relief, the District Court and the Circuit Court of Appeals found the facts as follows, to-wit:

"On December 17, 1940, and January 7, 1941, plaintiff delivered its proposed schedules of rules, working conditions and rates of pay. The services of the Mediation Board were invoked on January 15, 1941, and attempts to reach an agreement between the parties continued by the Board until November 21, 1941, when both parties refused to arbitrate and the Board terminated its mediation efforts. Prior to this, plaintiff had submitted its revised and amended proposals of rates of pay, rules and working conditions on November 3, 1941. On December 21, 1941 plaintiff notified defendants that its revised schedules would go into effect on December 29, 1941, and at 12:01 A.M. December 29, 1941 defendants struck. Defendants knew of plaintiff's revised schedule November 3, 1941 and the Mediation Board gave written notification of its withdrawal from the mediation proceedings on November 21, 1941. Both events occurred more than 30 days prior to the date when plaintiff's orders were put into effect" (R. 1031).

Following this finding of fact, the Circuit Court of Appeals then makes its final conclusion as follows:

"Since section 155 was the guiding section when the controversy was submitted to the Mediation Board, and more than 30 days had elapsed after the Board's withdrawal before any change in plaintiff's rates of pay, rules and working conditions, plaintiff complied with the Act" (R. 1031).

The District Court made a specific finding of fact (R. 970), Par. (d):

"That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes."

The above concurrent findings of fact of the two courts below are not shown by petitioners to be erroneous or unsupported by substantial evidence, and under the well established rule of this court these findings are accepted as unassailable.

Petitioners admit in their brief (page 37) that respondent was under no legal compulsion to submit to arbitration. Taking this as their construction of Section 7 (Sec. 157, Title 45 U.S.C.A.) of the Railway Labor Act, which provides:

"The failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise,"

there is no merit whatsoever in their argument that respondent could not enjoin petitioners from acts of violence and threats of violence.

If respondent complied with the provisions of the law, then it has performed all conditions required of it for injunctive relief.

Both lower courts have found that a good faith effort was made by respondent to settle the dispute. If respondent was not obliged to submit to compulsory arbitration, there was no other means of settling or attempting to settle the dispute, and especially in view of the fact that the undisputed evidence in the record shows that the Brother-hoods advised the representatives of respondent before the mediation proceedings had formally terminated that there was no rate of pay to which they would agree under the schedules respondent submitted on November 3, 1941 (R. 782).

These schedules did not become effective for thirty days after November 21, 1941, and in fact were not actually put into effect until December 29, 1941. More than the thirty days statutory period had elapsed after the formal termination of the mediation proceedings before these schedules became effective.

In addition thereto, Section 5 (Sec. 155, Title 45 U.S.C.A.) of the Railway Labor Act, provides that during the thirty day period after the termination of the mediation proceedings nothing shall change the finality of the termination of the mediation proceedings, except the appointment of an emergency board under Section 10 (Sec. 160, Title 45 U.S. C.A.) of the Railway Labor Act, or an agreement of the parties to arbitrate.

The record in this case shows that on November 17, 1941, respondent urged the Mediation Board to request the President to appoint an emergency board as provided in Section 10, and this request was made repeatedly until the strike occurred (R. 782, 785). No action was taken by the Mediation Board to request the President to appoint an emergency board as contemplated by the statute.

The Circuit Court of Appeals made the following finding of fact:

"An examination of the record indicates, however, that it made an effort by mediation to reach a satisfactory arrangement with defendants, and that, after nearly a year of negotiations, the Mediation Board terminated the proceedings after arbitration proposals submitted by it were refused by both parties. Plaintiff further sought to reach a satisfactory agreement with defendants by suggesting that an emergency board be appointed by the President, as well as that an impartial committee be appointed to examine the dispute. It is thus apparent that there was no lack of good faith by plaintiff to bar its right to an injunction because of refusal to arbitrate" (R. 1029).

This court has definitely decided that the obligation upon a railroad with reference to arbitration in a labor dispute is a voluntary choice, and not compulsory. The first case was Texas & N. O. R. Co. v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548, 50 S. Ct. 427, decided May 26, 1930, where Mr. Chief Justice Hughes (281 U. S. 564, 50 S. Ct. 431) said:

"While adhering in the new statute to the policy of providing for the amicable adjustment of labor disputes and for voluntary submissions to arbitration as opposed to a system of compulsory arbitration, Congress buttressed this policy by creating certain definite legal obligations. * The arbitration is voluntary, but the award pursuant to the arbitration is conclusive upon the parties as to the merits and facts of the controversy submitted." (Italics ours.)

The second case was decided after the amendment of the act in 1934, and was Virginian Ry. Co. v. System Federation No. 40, 300 U.S. 515, 57 S. Ct. 592 (decided March 29, 1937).

The construction of the provisions of the Railway Labor. Act in instant case by the Circuit Court of Appeals is squarely in line with the construction placed upon it by this court in the above cases, so far as the duty to arbitrate is concerned.

Counsel for petitioners misconstrues the meaning and intent of Section 155 of the Railway Labor Act (Title 45, U.S.C.A. 155) so far as it relates to the question of the duty of respondent to mediate or arbitrate, as a prerequisite to an application for injunctive relief. At page 37 of their brief they say that the clear intent of Congress was to induce settlement of a labor dispute without resorting to the courts, and adjustment without work stoppages, and following that assertion the inference of petitioners' argument is that a failure to submit to arbitration shall be sufficient to deprive the plaintiff of injunctive relief.

It was not the intention of Congress to force a carrier to submit to arbitration if mediation is resorted to and fails. This would result in the denial of the right of a carrier to secure injunctive relief to prevent the wilful and unwarranted destruction of its property and the interruption of its business.

The good faith of respondent cannot be questioned in this case, because the evidence is undisputed that following the elections for the purpose of selecting representatives, which occurred in the fall of 1940, it recognized no group, except the representatives chosen at that election. From that time to the date of the termination of the mediation proceedings, which occurred on November 7, 1941, it constantly engaged in mediation proceedings with the representatives of the Brotherhoods chosen at the elections, and the negotiations conducted by the mediator selected by the Railway Labor Act.

It submitted its new schedule of rates of pay and working conditions on November 3, 1941, and these were considered in the mediation proceedings until November 6, 1941, when respondent was advised by the representatives of the Brotherhoods that they could not agree to the proposals. Respondent then requested the Brotherhoods to suggest a rate of pay for which they would be willing to agree to the rules and working conditions (R. 782). On the day following, respondent was informed by the representatives of the Brotherhoods that they would not name a rate of pay for which they could accept the proposed rules and working conditions. The mediator then handed both parties joint arbitration proposals, and these were refused by both parties (R. 782).

On November 17, 1941, respondent requested the Board to appoint some impartial fact-finding commission to consider the matters involved in the dispute, and also asked the Board to request the President to appoint an emergency board, as provided by the Railway Labor Act. Such requests were ignored (R. 785-786), and the mediation proceedings terminated on November 7, 1941 and formal notice, as required by the statute, was given to the parties on November 21, 1941 (R. 782-783).

Prior to that time, both parties had refused to arbitrate. The statute provides that if arbitration is refused by one or both of the parties, the board shall at once notify both parties in writing that its mediatory efforts have failed (Title 45, U.S.C.A. Sec. 155). The board gave this notice in writing on November 21, 1941. From November 21, 1941 until December 21, 1941, respondent was not permitted by the terms of the statute to change the rates of pay, rules or working conditions, but these were frozen for the period of thirty days subsequent to November 21st.

· The statute expressly provides that after the expiration of thirty days from the date of the termination of the mediation proceedings by the mediation board, the carrier may change rates of pay, rules or working conditions, and no notice to the employees, either oral or in writing, is required by the Act, prior to the effective date of the change. The notice given by the carrier in instant case on November 21st, that it intended to put into effect the rates of pay, rules and working conditions as submitted of November 3, 1941, was not required by any provision of the Act. The giving of such notice had no bearing whatsoever upon the right of respondent to make the change effective December 29th. In other words, the carrier has the right to make any change it desires providing it does not make the change until after thirty days has expired from the date the board notifies both parties in writing that its mediatory efforts have failed. That provision of the statute which so clearly sets forth this procedure, is as follows:

"If arbitration at the request of the board shall be refused by one or both parties, the board shall at once notify both parties in writing that its mediatory efforts have failed, and for 30 days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 160 of this chapter, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose" (Title 45, U.S.C.A. Sec. 155).

The evidence shows that respondent was in good faith in instant case in endeavoring to settle this dispute, for the reason that it persisted in its efforts to have the mediation board recommend to the President of the United States the creation of an emergency board, as provided by Section 160 (R. 784-785).

After the termination of the mediation proceedings, which the record shows were conducted in good faith by respondent, it sought the appointment of an emergency ward as provided by the Railway Labor Act,

Section 160 (Title 45, U.S.C.A.) was passed by Congress May 20, 1926 and amended June 21, 1934, to meet the exact situation which is presented in instant case. This section provides for procedure which would have prevented a strike, had the mediation board complied with its mandatory provisions. It is there provided that in the event a dispute between a carrier and its employees is not adjusted by mediation, and that if there is a threat of interruption of interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the mediation board shall notify the President, who, in his discretion, may create a board to investigate and report respecting such dispute. This language does not give the mediation board a discretion, but a mandate, that it shall notify the President.

There is no question in the record that a strike was threatened on December 8, 1941, and the board knew that service would be interrupted, because it was notified of the strike notice to the employer, and requested the Brotherhoods not to strike. Notwithstanding, the fact that the evidence was in possession of the board that threats were of a substantial nature which, if carried out, would interrupt interstate commerce, the board did not notify the President, but ignored the request of the carrier.

The carrier was seeking an impartial tribunal. Section 160 provides that no member appointed to that board by the President shall be pecuniarily or otherwise interested in any organization of employees or any carrier. Respondent asked for the appointment of a board so constituted, and was willing to submit its case to that board.

This section also provides that after the creation of the board, and for thirty days after the board has made its report to the President, no change except by agreement shall be made by the parties to the controversy in the conditions out of which the dispute arose.

If the mediation board had performed its duty and notified the President of the conditions of the threatened strike and interruption of service, and the President had appointed this impartial board, no strike could have occurred, because respondent was not permitted to make any change in the rates of pay, rules and working conditions during the time of the existence of that board, and for a period of thirty days after its report to the President.

The evidence in this case shows the urgent request for the appointment of an emergency board, made by respondent in its telegrams to the board dated December 18, 1941, December 20, 1941 and December 28, 1941 (Exhibits 29-30 and 31, R. 785-778). The originals of these exhibits have been certified to this court as a part of the record. The record shows that no action was taken by the mediation board upon the request of respondent, and that the board did not request the President, as it is required to do under Section 160, to appoint this impartial emergency board (R. 788-789).

It is argued in petitioner's brief that respondent offered no explanation or justification for its refusal to arbitrate under the auspices of the Mediation Board. The excuse and justification are very apparent from the testimony in this record. The undisputed evidence is (R. 782) that on November 6, 1941, the Brotherhoods flatly refused the proposed schedules of respondent, and stated to respondent's representatives, in the presence of the mediator, that they would not submit any rate of pay under the proposed schedules. This was an ultimatum which indicated the arbitrary attitude of the Brotherhoods, and respondent had reached the point where its only recourse was to

request an impartial body, namely: an emergency board, to hear the evidence and decide the issues involved.

There is no presumption that this governmental agency would be fair, just and impartial, in the conduct of the arbitration, and with the experience which the respondent had had in the mediation, it could not be charged with had faith in refusing to sign an arbitration agreement, where the arbitration proceedings were to be conducted under the same atmosphere.

Respondent has always insisted upon a fair and impartial bearing of this labor dispute before a body which has no connection with either the Brotherhood interests or the milroad interests, and to this date it has been unsuccessful to have its case presented to a body of that character.

Petitioners say (Br. 10) that the President's executive order shows that it was issued because of the railroad management's refusal to settle the same labor dispute out of which this court proceeding arose. There is no evidence in this record to support these statements, nor is there any evidence, that when the government took over the road, the same rates of pay and working conditions then in effect on other railroads in the United States became operative on this road, with the resulting suspension of the strike.

Petitioners also say that the president of the railroad has requested the Office of Defense Transportation to return the road to its corporate management. There is no evidence in the record to support this statement.

The fact is that this entire labor dispute is based upon the contention of the Brotherhoods of their claimed right to enforce the commonly known "feather-bed rules" upon this railroad.

Mr. Joseph B. Eastman took over the operation of this railroad in March, 1942, and tried out the "feather-bed

rules," and, according to his own statements contained in a pamphlet recently published by him as the Director of the Office of Defense Transportation, he says he has modified certain of the "feather-bed rules" on the Peoria road. After Mr. Eastman published this pamphlet saying that the road was now being operated without the burden of certain of "feather-bed rules," and the waste of manpower and equipment by reason thereof, the management of the respondent advised him that it would take the road back and operate it.

Petitioners do not at any point in their brief say that respondent failed to mediate the dispute, as required by the provisions of the Railway Labor Act. There is no criticism by petitioners of the manner of the mediation, nor is there the slightest suggestion that respondent failed to comply in good faith with all of the requirements of the act relating to mediation.

The Railway Labor Act contemplates the settlement of labor disputes through conferences, or mediation, or voluntary arbitration. The Norris-LaGuardia Act requires that every reasonable effort to settle the dispute be made either by negotiation or with the aid of any governmental machinery of mediation or voluntary arbitration. There is no requirement in either Act that the employer must mediate, and also submit to compulsory arbitration.

Petitioners admit in their argument that the respondent was under no legal compulsion to submit to arbitration, and that is true under the decisions of this court. The cases heretofore cited, namely: Texas & N. O. R. Co. v. Brotherhood of Railway & Steamship Clerks, 281 U. S. 548, 50 S. Ct. 427, and Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592, clearly hold that the Railway Labor Act does not impose upon the carrier the obligation of compulsory arbitration, but that the

arbitration is voluntary, but the award is conclusive in the event arbitration is agreed upon.

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A court of equity cannot impose a greater obligation as a prerequisite to injunctive relief than the law imposes. In instant case, the obligation is fixed by statute, which expressly provides that neither body shall be guilty of the violation of the Railway Labor Act, by its failure or refusal to submit a controversy to arbitration, and that such failure or refusal shall not be construed as a violation of any legal obligation imposed upon it by the Railway Labor Act, or any other statute (Sec. 157 of Title 45, U.S.C.A.).

The Circuit Court of Appeals of the Fifth Circuit in Mayo v. Dean, 82 F. (2d) 554-556 (1936) passed squarely upon the question raised in instant case as to whether injunctive relief should be granted to a plaintiff in an equity case, in view of the provisions of Section 8 (Sec. 108, Title 29 U.S.C.A.) of the Norris-LaGuardia Act, where mediation was the means adopted and pursued to a condusion without arbitration, and the court in passing upon that question there said:

"Conceding, without so deciding, that the act applies, we consider it was fully complied with by complainant by availing himself of the services of the mediator of the Department of Labor. He was not obliged to propose both mediation and arbitration. One or the other would be sufficient." (Italics ours.)

Respondent also urges that where violence and threats of violence are committed by employees, Section 8 (Sec. 108, Title 29 U.S.C.A.) of the Norris-LaGuardia Act has no application. (Cater Construction Co. v. Nischwitz, 111 F. (2d) 971 (C.C.A. 7); United Electric Coal Co. v. Rice, 60 F. (2d) 1 (C.C.A. 7); Newton v. Laclede Steel Co., 80 F. (2d) 636 (C.C.A. 7), and this holding was adhered to in instant case by the Circuit Court of Appeals (R. 1030).

The Seventh Circuit Court of Appeals in United Electric Coal Co. v. Rice, et al., 80 F. (2d) 1, held that the Norris-LaGuardia Act (29 U.S.C.A. 108) limiting the power of a federal court of equity to grant injunctions in labor dispute cases, does not prevent the court from protecting property from wilful destruction. Certiorari was denied by this court in that case. (Rice v. United Electric Coal Co., 297 U. S. 714, 56 S. Ct. 590.)

CONCLUSION.

Respondent respectfully submits that the granting of a temporary injunction is within the sound discretion of the trial court. (City of Reno v. Sierra Pac. Power Co. (C.C.A. 9th) 44 F. (2d) 281; Petroleum Exportation v. Public Service Commission, 304 U. S. 200 at 218, 58 S. Ct. 834 at 839.)

The evidence in instant case shows that respondent sustained the complaint by an overwhelming preponderance of the evidence, and that the decree of the District Court and the judgment of the Circuit Court of Appeals should be affirmed.

Wherefore, respondent respectfully prays that the decrees of the District Court and the Circuit Court of Appeals be affirmed.

JOHN M. ELLIOTT,
CLARENCE W. HEYL,
Attorneys for Respondent.

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IN THE

Supreme Court of the United States

Octobus TREM, A. D. 1943.

No. 28.

THE BROTHERMOOD OF RAMEROAD TRAINMEN, ENTERPRISE
LODGE No. 27, ST AL., Petitioners,

Tolapo, Paonia & Westkan Rail. Boad, Respondent.

On Writ of Certificari to the United States Circuit Court of Appeals for the Seventh Circuit.

ADDITIONAL BRIEF OF RESPONDENT.

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IN THE

Supreme Court of the United States

Остовек Текм, A. D. 1943.

No. 28.

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE No. 27, ET AL., Petitioners,

V.

Toledo, Peoria & Western Railroad, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

ADDITIONAL BRIEF OF RESPONDENT.

Respondent is obliged to file this additional Brief to correct many inaccurate and misleading statements of fact by Petitioners. In Respondent's original Brief, an attempt was made to correct these inaccuracies; but in their Reply, Petitioners have repeated many of them.

In Petitioners' original Brief (P. 3), they say the Brotherhoods called a strike for December 9, 1941, but agreed to an indefinite postponement.

The Record shows that the Brotherhoods' strike notice to Respondent was dated December 8, 1941, and that the

exact time of its receipt by Respondent was 11:44 A.M. that day. The notice provided that the strike would be effective at 11:00 A.M. Tuesday, December 9, 1941. (R. 786.) These facts, clearly established by the testimony, show that the Brotherhoods called this strike after Pearl Harbor.

Petitioners further state that the Brotherhoods agreed to an indefinite postponement of the strike after Pearl Harbor. The fact is that the strike notice was at no time withdrawn, although it was temporarily withheld until 11:15 A.M. December 28, 1941, when the Brotherhoods gave Respondent notice that they would discontinue their employment at 6:00 P.M. that same day. (R: 786, 787.)

On Monday, December 29, 1941, Respondent served a written notice personally upon each one of the employees involved, requesting them to report for work at 9:00 A.M. Tuesday morning December 30, 1941. (R. 787.)

Petitioners, in Brief (P. 3), state that on December 17th and again on December 28th the National Mediation Board requested the Railroad and the Brotherhoods to submit to arbitration and that the Brotherhoods agreed but the Rail-Petitioners' statement is incorrect. · vember 21, 1941, the National Mediation Board requested both parties to agree to arbitration. Both parties their declined to submit the dispute to arbitration. shows letters from the two Vice Presidents of the Brotherhoods to the National Mediation Board in which they declined to submit the dispute to arbitration. These are Exhibits 27 and 28 (R. 780). These letters, written by the Brotherhoods to the Secretary of the National Mediation Board are dated November 8th, and on that date both Brotherhoods definitely stated their unwillingness to submit the dispute in question to arbitration.

The Record shows that the Brotherhoods had not agreed to arbitrate on December 17th (R. 791) and that notice of their agreement to arbitrate was not received by Respondent until after the Brotherhoods had served notice upon Respondent on December 28, 1941, advising Respondent of the effective hour of the strike later that afternoon, and Respondent had wired the National Mediation Board to that effect and later received the Board's reply a few hours before the strike became effective. (R. 791.)

The above facts correct the inference obtained from reading Petitioners' Brief (P. 3) and Reply (P. 9-11) that the Brotherhoods had always agreed to arbitrate.

The above facts are also submitted to correct the statement by Petitioners in Reply (P. 9) that the Railroad deliberately provoked this strike shortly after the war began. The strike was put into effect by the Brotherhoods after Pearl Harbor to force the Railroad to agree to their demands. The undisputed testimony (R. 782) is that the representatives of the Brotherhoods informed the Railroad on November 6, 1941, that they would not suggest a rate of pay for which they would be willing to agree to the rules and working conditions submitted by Respondent. (See original Brief of Respondent, P. 53.)

In Petitioners' Summary of Argument (P. 7), they state that the Railroad is now federally operated because of the Railroad management's refusal to settle the labor dispute. This is not a true statement of the facts. The Brotherhoods arbitrarily discontinued mediation by refusing to state a rate of pay for which they would continue in the employ of the Railroad under the Railroad's proposals (R. 782). That arbitrary attitude, together with the unrestrained violence against Respondent's property and employees, were two factors which caused the President to take possession of the property.

After the Injunction Order was entered, certain of the Petitioners wilfully refused to obey the Injunction, and continued their acts of violence against the employees and the property. (R. 985-990.) The Order for Injunction was entered on January 19, 1942, and was immediately served upon all the Petitioners and the public officers charged with preserving the peace in the vicinity of the property, as is required by statute.

On February 9, 1942, the District Judge found, in an order signed at that time, that certain of the Petitioners were refusing to comply with or obey the terms of the Temporary Injunction and directed by that order that the United States Marshal employ additional deputies for the purpose of enforcing the Court's order, the pay for said deputies to be borne by the Respondent and taxed as costs in the case. (R. 986, 987.)

The Marshal refused to employ additional deputies, and did not obey the order of the Court and enforce the Injunction for the protection of the Respondent's property and employees. Therefore, the Writ of Injunction became a nullity so far as the protection to Respondent's property and employees was concerned. On February 9, 1942, the Court entered orders against certain Respondents to appear and show cause why they should not be punished for contempt of Court in the violation of said Injunction. (See Orders to Show Cause in Contempt Proceedings, R. 985, 987, 988, 989, and 990.)

To other factors contributing to the seizure of the rail-road/were:

- 1. The failure of the National Mediation Board to comply with the repeated request of Re-pondent and suggest to the President the appointment of an Emergency Board. (See further suggestions on this point, Respondent's Brief (P. 53-58).
- 2. The failure of the Brotherhoods to abide by the agreement of labor made with the President of the United States that there should be no strikes or stoppage of work for the

duration of the War, which agreement was made after Pearl Harbor and before the strike became effective in the instant case.

Contrary to the facts in the Record, counsel for Petitioners has persisted in making the statement that the violence was of a minor nature; and in the Reply (P: 1-2) he states that the acts of violence were confined to an exchange of blows between pickets and a strike breaker, and an incident where a bottle of inflammable liquid was thrown upon an engine, and several times when rocks were thrown at passing trains. If counsel for Petitioners had read the testimony appearing in the Record, to which Respondent makes reference in the Brief filed herein on Pages 39-45, he would not have made the unqualified statement which appears in Petitioners' original brief (P. 3) and the Reply (P. 2). Not only were freight trains carrying interstate commerce stopped as a result of violence and employees brutally assaulted (in two instances rendered unconscious by reason of violence), but connecting carriers were likewise prevented by violence or threats of violence from. making deliveries or transfers of interstate freight to Respondent.

On December 29, 1941, the Peoria & Pekin & Union Railway (a terminal railroad serving various roads in Peoria) attempted to make a delivery to Respondent of a cut of cars containing interstate freight. This delivery was prevented by reason of the threats of violence of Petitioners (R. 589-594) and all of the cars were returned to the yards of the P. & P. U. A list of these cars is shown by Exhibit 9. (R. 612.)

On January 2, 1942, there were other interstate cars for delivery by this terminal railroad to the Respondent, and the Superintendent of the P. & P. U., learning of the violence occurring upon Respondent's Railroad, had a meeting with Coyle and Keiser, Vice Presidents of the two

Brotherhoods, and the local General Chairmen on the P. & P. U. The testimony of the Superintendent of the P. & P. U. shows (R. 593, 594) that because of the element of danger to his men, the terminal railroad refused to make any further deliveries of interstate freight to Respondent until after the temporary restraining order was issued.

The Yard Master for the Burlington Railroad testified as to threats of violence to his men in attempting to make delivery interstate freight from the Burlington Railroad to Respondent. (See testimony of Earl Marts, R. 595, 602.)

On January 2, 1942, about 3:00 P.M., Marts attempted to make a delivery of fifteen cars, some of which contained interstate freight, and was prevented from making the delivery because of the mob which stopped the engine and cut of cars in East Peoria, Illinois, one block from the Police Station. Marts asked the Chief of Police to give protection to his men if he attempted to cross the picket line and make the delivery. In the presence of some of the representatives of the Petitioners, he asked the Chief of Police this question (R. 597):

"You refuse to grant us protection?"

The Chief of Police answered, "I do, because I haven't men enough."

Finally the strikers permitted Marts to disconnect the engine drawing the cars to cross the picket, line for the purpose of reaching a switch so as to back up and connect with the rear car in the cut so that the cars might be returned to the Burlington yards. Therefore, the cars were not delivered because of the threats of violence to the men of the Burlington Railroad, which threats were made in the presence of the Chief of Police, who refused to enforce the law and protect men who were not in the employ of Respondent and had nothing whatsoever to do with the strike. Exhibit 17 shows a list of the interstate cars in the Burlington transfer cut above referred to. (R. 613.)

The other interference, with the delivery or transfer of interstate freight occurred on December 31, 1941, at Sword's Siding. For the facts with reference to that transaction and the vicious assault upon the firemen, see Respondent's Brief. (P. 39, 40.) (Also, see Exhibit 12 (R. 613) for list of interstate cars in this cut.)

For further Record references on the question of the extent of violence, see Respondent's original Brief, under

point IV, Pages 36 to 45.

In Petitioners' Brief (P. 36) the statement is made that there was no evidence of threats of violence on December 17 and December 28, 1941. This statement is incorrect. The following appears in the evidence (R. 720):

"There had been threats conveyed to us before the strike started that no train would ever reach the Illinois River Bridge going west, and no train get to Washington going east."

Also, (R. 738):

"There had been some threats, as I testified, that if the strike went into effect, that nobody would be alive when a train got to the Illinois River Bridge, there would be no train that would ever get to the Illinois River Bridge."

There was no denial of this testimony by any of the Petitioners who were charged with making these threats.

In Petitioners' reply (P. 9), an inaccurate statement is made with reference to the "Findings of Fact" by the trial Court. Petitioners say:

"the Court merely found that the railroad has complied with the obligation imposed on it by law. "At no place did the District Court ever find that it had made every reasonable effort to settle the dispute." To correct this, we quote that entire finding of fact. (R. 970):

"(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brother-hoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to Labor disputes."

Following their incomplete quotation above mentioned, Petitioners quote one paragraph of the oral statement of the trial Court. Without extending this Brief, we respectfully refer this Court to the complete statement of Judge Adair. (R. 954-957.)

III.

The point raised in Petitioner's Brief under III (P. 22) is the question of whether a Federal Court has jurisdiction of the subject matter of this action.

Respondent submits the following additional authorities in support of its argument under Point III of its Brief (P. 23-36):

The Constitution of the United States, Sec. 8, Clause 3, vested power in Congress to regulate commerce with foreign nations and among the several states and with the Indian Tribes. On June 15, 1866, Congress passed a statute, which is now Title 45, Sec. 84. So far as said section relates to this question, it is as follows:

"Every railroad company in the United States, whose road is operated by steam, its successors and assigns, is authorized to carry upon and over its road, boats, bridges, and ferries, all passengers; troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination.

This statute was originally known as R. S. #5258.

Following the enactment of this statute, Congress passed the Interstate Commerce Act and the Transportation Act; and by so doing, assumed exclusive jurisdiction in the field of interstate commerce so far as it relates to railroads. By these acts, it excluded all interference by the states.

This Court has repeatedly recognized the effect of the above statute, R. S. #5258, and has held that any acts which directly burden or obstruct interstate or foreign commerce or its free flow are within the reach of the Congressional power.

In instant case, one of the questions for the District Court to determine was whether or not the acts of the Petitioners in committing violence constituted an obstruction to the free flow of interstate commerce, and that decision involved a Federal question.

In Robbins v. Shelby County Taxing District, 120 U. S. 489 at 493, this Court in 1886 said:

"Another established doctrine of this court is, that where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restriction or impositions; and any regulation of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom."

Also, at Page 494, said:

"In a word, it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon the subject."

Also, see Chicago, Rock Island, & Pacific Ry. Co. v. Harwick Farmers Elevator Co., 226, U. S. 426; Adams Express Co. v. Kentucky, 214 U. S. 218 (1908).

In the case last above cited, this Court held that by the above statute, R. S. #5258, Congress authorized every rail-

road company to carry freight over its road and to receive compensation therefor, and any exercise of state authority regulating that commerce is repugnant to the commerce clause of the constitution.

In Pullman Co. v. Linke, et al., 203 Fed. 1017 (1913) the Court held that an attachment levied upon a pullman car, which attachment was issued under a valid law of the State of Ohio, not merely incidentally and indirectly affected interstate commerce, but bore upon it so directly as to amount to its regulation.

Also, see Galveston Ry. Co. v. Tex., 210 U. S. 217, 227.

A very clear statement of this principle may be found in 20 Harvard Law Review, Pages 319-320, and is as follows:

"But an attachment, whether of cars of a resident or non-resident carrier, which directly stops the delivery of interstate freight is very different. Though aimed to secure debts, it has a direct effect upon articles of interstate commerce not connected with the debt. * * * An attachment of this nature may be said to regulate interstate commerce. Moreover, as a regulation, it is clearly contrary to the intent of Congress, for it would either greatly delay or cause the trans-shipment of interstate freight—just those inconveniences which the federal statute authorizing arrangements for continuous carriage was passed to avoid."

In National Labor Relations Board v. Jones & Laughlin, 300 U.S. 1, at 31, 32, the Court held:

"It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the Congressional power. Acts having that effect are not rendered inmune because they grow out of labor disputes. See Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548, 570; Schechter Corp. v. United States, supra, pp. 544, 545; Virginian Railway v. System Federation, No. 40, 300 U. S. 515. It is the effect upon commerce, not the source of the injury which is the criterion. Second Employers' Liability Cases, 223 U. S. 1, 51."

And in Second Employers' Liability Cases, 223 U.S. 1, the Court said:

""To regulate; in the sense intended, is to foster, protect, control and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large."

For additional cases on this point, Respondent refers to those cited in the opinion of the Circuit Court of Appeals in instant case. (R. 1026, 1027)

Petitioners argue that because there is no Federal statute specifically defining the remedy by injunction for the interference by violence with the movement of interstate commerce, the Court is without jurisdiction to entertain this suit.

In Sprague v. Ticonic, 307 U. S. 161, at 164, the Court held:

"The suits 'in equity,' of which these courts were given 'cognizance' ever since the First Judiciary Act, constituted that body of remedies, procedures and practices which heretofore had been evolved in the English Court of Chancery, subject, of course, to modifications by Congress, e.g., Michaelson v. United States, 266 U. S. 42."

Rule I of the Rules of Civil Procedure for District Courts of the United States, promilgated by this Court under an Act of 1934, recognizes equity jurisdiction in the Federal Courts.

In Virginian Railway Co. v. System Federation, 300 U.S. at 515, the Court held that where there is no adequate remedy at law the extent to which equity will go to give relief is not a matter of fixed rule, but the right rests in the sound discretion of the court.

The Norris-La Guardia Act, Title 29, Sec. 52, preserves the right of injunctive relief in cases between employer and employees, where it is necessary to prevent irreparable injury to property, and where the acts complained of constitute violence or threats of violence.

In support of their position of lack of jurisdiction, Petitioners argue that Federal law imposes upon common carriers by truck the duty to furnish transportation and facilities and that under the reasoning of the Circuit Court of Appeals in instant case, a trucker would have a federal right to be free from any act obstructing or impeding the movement of his truck, and a remedy in the federal courts for his damage.

In Petitioners' Reply (P. 7) Sharp v. Barnhart, 117 F. 2d. 604, is referred to with the comment that that decision supports their contention. In that case the truck was stopped by the Indiana police for improper plates, no direction lights, and no flags or flares. This act of stopping the truck was permissible because of a reasonable state regulation relating to the use of the highways which belong to the state. The truck in that case was not licensed under the Federal Motor Carrier Act.

An examination of Sec. b of Paragraph 302 of Title 49 U. S. C. A. will disclose that Congress in passing the Federal Motor Carrier Act reserved to the states the authority to control the highways by reasonable regulations. All that is said by Petitioners in their Brief (P. 30 and 31) and Reply (P. 7) is fully answered by the statement of the Circuit Court of Appeals of the Seventh Circuit in deciding the above case, at Page 607 of the Opinion, as follows:

"Hence, for both reasons (a) that the appellants had no permits as provided by the Federal Motor Carrier Act, so as to bring themselves within the protection of the Act, and (b) because the Federal Motor Carrier Act has not yet been extended to cover ordinary traffic safety regulations, neither action is within the exception of 28 U. S. C. A. #41 (8), which grants the Federal Court jurisdiction of 'suits under the interstate commerce laws,' irrespective of the jurisdictional amount involved."

Respectfully submitted,

JOHN M. ELLIOTT, CLARENCE W. HEYL,

Attorneys for Respondent.

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IN THE

CHARLES ELMORE GROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL.,

Petitioners.

US.

TOLEDO, PEQRIA & WESTERN RAILROAD,

Respondent.

ON WRIT OF CERTICEART SO THE UNITED STATES CIRCUIT COURT OF APPEARS FOR THE SEVENTH CIRCUIT.

ADDITIONAL BRIEF OF RESPONDENT IN REPLY TO BRIEF OF PETITIONERS FILED AFTER ORAL ARGUMENT.

> JOHN M. ELLIOTT, 1401 Alliance Life Building, Peoria, Illinois,

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Attorneys for Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1943

No. 28

THE BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL., Petitioners.

22.8

TOLEDO, PEORIA & WESTERN RAILROAD, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ADDITIONAL BRIEF OF RESPONDENT IN REPLY TO BRIEF OF PETITIONERS FILED AFTER ORAL ARGUMENT.

The misleading character of the assertions in the first 2½ pages of Petitioner's Brief filed since oral argument can be quickly discerned by reference to the record.

A strike vote is not a strike notice. Respondent did receive a wire from the National Mediation Board on December 6, 1941, notifying Respondent that said Board had been advised that enginemen, trainmen and yard service employes would be withdrawn from service on December 9th. But that was not the Brotherhoods' strike notice to Respondent. The Brotherhoods' strike notice to Respondent was dated December 8th and was served upon Respondent at 11:44 A. M. December 8th, 24 hours after Pearl Harbor (R. 786). On December 28, 1941, the day they finally elected to discontinue their employment, the Brotherhoods again served their notice directly upon the Railroad, not upon the Mediation Board (R. 786, 787).

Consideration of the National Mediation Board's telegram of reply of December 28th (R. 791) is not complete unless there is read with it Respondent's telegram to the Mediation Board (Exhibit 31) which preceded it. In Respondent's telegram to the Mediation Board, Respondent again appealed, and repeated its former requests (Exhibits 29 and 30), for the appointment of an Emergency Board. Consideration should also be given to Respondent's letter to the Mediation Board of November 17, 1941, written before the situation became acute (R. 782), in which Respondent urged the Mediation Board to appoint an impartial commission to consider the matters involved in the dispute.

Respondent's repeated requests for an impartial tribunal to consider the issues involved (R. 782, 785-786, and Exhibits 29, 30 and 31) fully demonstrate its good faith in trying to obtain the benefit of an impartial public tribunal, as provided by law, and the advice which such tribunal might offer as to the propriety of acceding to the Brotherhoods' demands for grossly wasteful practices in time of War (Exhibits 29 and 30), and thus reach a proper settlement.

However, the Mediation Board declined to discuss the appointment of an Emergency Board with Respondent (R. 786), did not reply to Respondent's repeated requests for an Emergency Board (R. 788); and no Emergency Board or Commission was ever appointed (R. 788).

The Emergency Board procedure is provided in the Railway Labor Act for the express purpose of avoiding strikes. It is the specific remedy designed by Congress to be used when conditions reach that unfortunate stage.

THE STRIKE COULD HAVE BEEN AVOIDED IF THE NATIONAL MEDIATION BOARD HAD USED THE REMEDY SPECIFICALLY PROVIDED BY CONGRESS FOR THE PURPOSE OF AVOIDING RAIL-ROAD STRIKES.

III.

The answer to the question propounded by Petitioners under point III, page 3 of their last brief, may be found by reference to the original brief of Respondent under point III (pages 23 to 36), and additional brief of Respondent filed before oral argument (pages 8 to 12), and also to page 4 of the original brief containing a statement as to the federal statutes relied upon by Respondent.

Respondent believes that it is not the law of the land that mobs may, by force and violence, interrupt freight trains carrying interstate commerce and war materials, without any restraint except that which a state may choose to provide; nor does Respondent believe that a federal district court is without jurisdiction to protect these movements by enjoining such acts of violence.

Respectfully submitted,

JOHN M. ELLIOTT,

CLARENCE W. HEYL,

Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 28 .- OCTOBER TERM, 1943.

The Brotherhood of Railroad Trainmen, Enterprise Lodge, No. 27, et al., Petitioners,

On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Toledo, Peoria & Western Railroad.

[January 17, 1944.]

Mr. Justice RUTLEDGE delivered the opinion of the Court.

The important question is whether the District Court properly issued an injunction which restrained respondent's employees, conductors, yardmen, enginemen and firemen, from interfering by violence or threats of violence with its property and interstate railroad operations. The sole issues that concern us are the existence of federal jurisdiction and whether the requirements of the Norris LaGuardia Act (29 U. S. C. §§ 107, 108, 47 Stat. 71, 72) were satisfied.

The case arises out of a long-continued labor dispute relating, to working conditions and rates of pay. Negotiations between the parties, beginning in October, 1940, failed. A long course of mediation, with the aid of the National Mediation Board, resulfed likewise. Accordingly, on November 7, 1941, the mediator proposed arbitration pursuant to the Railway Labor Act's provisions. 45 U. S. C. § 155, First (b), 48 Stat. 1195. Both parties refused. Thereupon, as the Act requires, the Board terminated its services. Ibid. This occurred November 21, 1941. the statute, no change in rates of pay, rules, working conditions or established practices can be made for thirty days, unless in that time the parties agree to arbitration or an emergency board is created under Section 10. Ibid. Anticipating respondent would put into effect its proposed schedules at the end of the period, the employees voted to strike. The time for stopping work was set for December 9 at 11:00 a.m. Respondent knew of the voting on or before December 6, but did not receive formal notices of the strike until about noon of December 8.

With the bombing of Pearl Harbor on December 7, the Mediation Board again intervened, strongly urging both sides to settle the dispute in view of the national emergency. At the Board's request the employees had postponed the strike indefinitely. Further conferences failed to bring agreement and on December 17 the Board again urged that the disputants agree to arbitration under the statute. This time the employees accepted. But respondent continued its refusal, though it also continued to urge the appointment of an emergency board. And, while the record does not show that respondent was notified formally of the employees' agreement to arbitrate until December 28, neither does it appear that respondent did not know of this fact before that time.

On December 21, exactly the expiration of the thirty-day period, respondent by letter notified the employees and their representatives that its proposed schedules would become effective at 12:01 a.m., December 29. By letter dated December 27 and received by respondent before noon on December 28, the employees served notice that a strike would take effect December 28 at six o'clock in the evening. By wire which respondent received that day, the Board again strongly urged arbitration, pointing out the employees had acceded to the Board's request. Respondent again declined and urged an emergency board be appointed.

The strike took effect at the appointed time. Picket lines were formed. Respondent undertook to continue operations with other employees. It employed "special agents" to protect its trains and property. Clashes occurred between them and the working employees, on the one hand, and the striking employees on the other. Various incidents involving violence or threats of violence took place. Some resulted in personal attacks, others in damage to property and interruption of service. The respondent sought the aid of public authorities, including the sheriffs of counties along its right of way and police authorities in cities and towns which it served. Some assistance was offered, but in some instances the authorities replied they had forces inadequate to supply the aid respondent requested and in others no reply was

¹ Petitioners' brief characterizes their action as agreement "to an indefinite postponement." Respondent says "the strike notice was at no time with drawn, although it was temporarily withheld" until December 28.

The record does not disclose the exact time or manner of petitioner-agreement, but clearly indicates it was in response to this proposal of the Board, not the later one of December 28, which was addressed solely to respondent and recited the employees' previous agreement.

³ There were twenty-nine of these: The employees involved in the disputnumbered about one hundred.

given. The parties are at odds concerning the extent of the violence, the need for public protection, and the adequacy of what was supplied or available. But the findings of the District Court are that the violence was substantial and the protection supplied by the public officials was inadequate. These incidents took place through the period extending from December 29, 1941, to January 3, 1942.

On the latter date respondent filed its complaint, asking for a temporary restraining order and, after hearing, an injunction restraining petitioners from interfering with its operations and property. The restraining order issued ex parts the same day, respondent giving bond as required (29 U. S. C. § 107, 47 Stat. 71-72) for indemnity against loss occasioned by its improvident or erroneous issuance.

Hearing on the application for a temporary injunction began January 8 and continued to January 19. Two extensions continued the restraining order in force until the bearing was completed. Petitioners moved to vacate the extensions on January 15 and again at the close of the hearing on January 19, and to dismiss the complaint. These motions were denied, and the court made findings of fact and conclusions of law sustaining respondent's contentions. Thereupon the temporary injunction issued. In due course appeal was perfected from the order for its issuance and the previous orders denying petitioners' various motions to vacate the extensions and to dismiss the complaint. The Circuit Court of Appeals, one judge dissenting, affirmed the judgment. 132 F. 2d 265. We granted certiorari because of the importance of the issues presented. 318 U. S. 755.4

Three principal issues have been made in the lower courts and here. Stated in the form of petitioners' contentions, they are:
(1) The District Court was without jurisdiction, since there is no claim of diversity of citizenship and, it is said, no federal

⁴ It may be added to the background of facts that, between January 19, when the injunction issued, and the time when the appeal was perfected, various individual defendants, petitioners here, were cited to show cause why they should not be punished for contempt for violating the injunction. The court also issued an order on February 9 directing the marshal to enforce the injunction by proper means, including the employment of additional deputies if necessary. The record shows the citations were set for hearing but does not disclose what disposition was made of them. It appears, however, from the briefs that the persons cited were convicted and sentenced for violation of this case.

question is involved;⁵ (2) the evidence was not sufficient to show that the public authorities were unwilling or unable to furnish adequate protection for respondent's property;⁶ and (3) respondent did not make every reasonable effort to settle the dispute as required by the Norris-LaGuardia Act.⁷ Without passing upon the others, we think the last contention must be sustained.

Section 8 of the Norris-LaGuardia Act (29 U. S. C. § 108, 47 Stat. 72) provides:

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

The question, broadly stated, is whether respondent made "every reasonable effort" to settle the dispute, as the section requires. On the facts this narrows to whether its steadfast refusal to agree to arbitration under the Railway Labor Act's provisions made the section operative. We think it did, with the consequence that the federal courts were deprived of the power to afford injunctive relief and respondent was remitted to other forms of legal remedy which remained available.

Respondent was subject to the Railway Labor Act. Its provisions and machinery for voluntary arbitration were "available."

U. S. 77; Gully r. First National Bank, 299 U. S. 109.

Respondent and the lower courts find the jurisdictional basis generally in the duties imposed upon carriers by the Interstate Commerce Act and other federal statutes, including the criminal statute referred to above. They rely upon such authorities as In re Lennon, 166 U. S. 548; Toledo, Ann Arbor & North Michigan Ry. v. Pennsylvania Co., 54 Fed. 730 (C. C. N. D. Ohio); and Wabash R. R. r. Hannahan, 121 Fed. 563 (C. C. E. D. Mo.).

⁵ In the lower courts and here this issue was highly controverted. Petitioners say jurisdiction is lacking since the cause of action is one merely for exercise of the general police power in the protection of the railroad's property. The complaint, it is said, does not specify any provision of federal law which requires construction or application and does no more than aver a general reference to federal statutes, including the Interstate Commerce Act and the statute making criminal specified interferences with interstate railroad property. 18 U. S. C. § 412(a); cf. Cohens v. Virginia, 6 Wheat. 264; Norton v. Whiteside, 239 U. S. 144; Niles-Bement-Pond Co. v. Iron Moulders Union, 254 U. S. 77; Gully v. First National Bank. 299 U. S. 109.

⁶ Cf. the Norris-LaGuardia Act, 29 U. S. C. § 107(e), 47 Stat. 71.

Petitioners also urge that the temporary restraining order became void on the expiration of five days by the provisions of 29 U. S. C. § 107(e), and could not be extended beyond that time; hence the orders continuing it in force were nullities; and that the evidence was insufficient to show they had participated in or ratified any act of violence or of interference with respondent's operations or property.

⁸ Cf. text infra at note 21.

Resort to them would have been a "reasonable effort to settle" the dispute. Clearly arbitration under the Act was a method, both reasonable and available,9 which respondent refused to employ. not once, but repeatedly and adamantly. If it had been used, it would have averted the strike, the violence which followed, and the need for an injunction.10

Section 8 demands this method be exhausted before a complainant to whom it is available may have injunctive relief. Broadly, the section imposes two conditions. If a complainant has failed (1) to comply with any obligation imposed by law or (2) to make every reasonable effort to settle the dispute, he is forbidden relief. The latter condition is broader than the former. One must not only discharge his legal obligations. He must also go beyond them and make all reasonable effort, at the least by the methods specified if they are available, though none may involve complying with any legal duty: Any other view would make the second condition wholly redundant. It clearly is not the section's purpose, therefore, by that condition, to require only what one is compelled by law to do. Yet, as will appear, this would be the effect of accepting respondent's position.

It is wholly inconsistent with the section's language and purpose to construe it, as have respondent and the lower courts, to require reasonable effort by only one conciliatory device when others are available. The explicit terms demand "every reasonable effort" to settle the dispute. Three modes are specified.11 They were the normal ones for settlement of labor disputes by the efforts of the parties themselves and the aid of agencies adapted

⁹ Cf. 45 U. S. C. § 157, 44 Stat. 582-584, 48 Stat. 1197. Each party selects an equal number of arbitrators who select another or others, but in case of failure of the named arbitrators to agree the Mediation Board selects the additional member or members.

¹⁰ The award is made final and conclusive upon the parties except for possible impeachment of the judgment entered upon it, in judicial proceedings, on grounds specified in the statute. 45 U.S.C. § 158(1), (m), (n), 44 Stat. 584-586, 48 Stat. 1197; § 159; Second, Third, 44 Stat. 585.

¹¹ It is not necessary to determine whether they are illustrative or exclusive. Respondent's emphasis upon the disjunctive meaning of "either . . . or or'' effectually eliminates "every" from the section. It distorts "every reasonable effort '' into meaning, in effect, "one of the following reasonable efforts.' A similar distortion is its apparent view that the phrase "with the aid of any available governmental machinery' qualifies only "mediation" and not "voluntary arbitration." Cf. the further discussion in the text, infra at note 20. And if the section uses "or" only in the disjunctive, it would be enough either to comply with legal obligations or to make reasonable effort, a view so obviously untenable it has not been suggested.

specially for the purpose. The Railway Labor Act¹² provided for all of them, with the aid of governmental machinery in the stages of mediation and arbitration. Section 8 is not limited to railway labor disputes. But it includes them, ¹³ And its very terms show they were used in explicit contemplation of the procedures and machinery then existing under the Railway Labor Act and with the intent of making their exhaustion conditions for securing injunctive relief, not singly or alternatively, but conjunctively or successively, when available. This purpose of Congress is put beyond question when the section's legislative history is considered in the light of the history and the basic common policy of the two statutes, the Railway Labor Act and the Norris-LaGuardia Act.

The policy of the Railway Labor Act was to encourage use of the nonjudicial processes of negotiation, mediation and arbitration for the adjustment of labor disputes. Cf. General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Teras R. R., 88 L. ed. 104; General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Southern Pacific Co., 88 L. ed. 112. The over-all policy of the Norris-LaGuardia Act was the same. The latter did not entirely abolish judicial power to impose previous restraint in labor controyersies. But its prime purpose was to restrict the federal equity power in such matters within greatly narrower limits than it had come to occupy.14 It sought to make injunction a last line of defense, available not only after other legally required methods, but after all reasonable methods as well, have been tried and found wanting. This purpose runs throughout the Act's provisions. It is dominant and explicit in Section 8. In short, the intent evidenced both by words and by policy was to gear the section's re-

¹² The Norris LaGuardia Act was adopted March 23, 1932. 47 Stat. 70. At that time the Railway Labor Act of 1926 was in force. 44 Stat. 577. Though it differed in substantial respects from the Railway Labor Act of 1934, now in effect (48 Stat. 1185), it contained provisions for the three procedures of negotiation, mediation and arbitration which, for present purposes, were identical with or substantially similar to those of the later statute. The 1934 changes related principally to the machinery for making the procedures effective, though in some instances it more definitely crystallized legal obligations.

¹³ Much of the debate in Congress related to previous railway labor disputes, including the Pullman controversy of 1894 and the shop-craft strike of 1922, and to decisions relating to injunctions which had been issued in connection with these disputes, e.g., In re Debs, 158 U. S. 564; cf. 75 Cong. Rec. 4618-4620, 5472-5479, 5503-5504.

¹⁴ Cf. the debates in Congress, 75 Cong. Rec. 4505-4510, 4618-4626, 5462-5515.

quirements squarely into the methods and procedures prescribed by the Railway Labor Act.

Short reference to the legislative history makes this plain. There was extended discussion of the bill in the Congressional debates, a considerable part relating to the Railway Labor Act's provisions and operation. No one suggested that the bill and that Act were not to be meshed in operation or that compliance with only one of the methods prescribed in Section 8 would satisfy its requirement of "reasonable effort." On the contrary, it seems to have been taken for granted that exhaustion of all is demanded. Numerous proposals for amendment in other respects were made, but there were none for changing this requirement. And Representative LaGuardia, who sponsored the bill in the House, after quoting and discussing provisions of the Railway Labor Act of 1926, quoted Section 8 and said, without challenge to his construction:

So that there is the tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The workers could not and would not think of going on strike before all the remedies provided in the law have been exhausted. If the railroads have complied, they would not, as has been suggested [by Representative Beck], be deprived of any relief which they may have in law or equity. [Emphasis added.]¹⁶

Representative O'Connor, supporting the sponsor's view, characterized Section 8 as "the 'clean hands' provision" and said:

That section provides that a complainant shall not be entitled to an injunction if he has not complied with any contract or obligation on his part or has not made every reasonable effort to settle the dispute by the available methods of arbitration or mediation. Surely, this fundamental principle of equity that

¹⁵ Cf. notes 13, 14 supra.

^{16 75} Cong. Rec. 5504. And, at 5508, in response to an inquiry whether or not Section 8's requirements would apply where it might be impossible to move for settlement by negotiation, mediation or arbitration, he stated:

[&]quot;The answer to that is simple. In seeking a restraining order a party believed to be aggrieved comes into court and under a certain state of facts, which are enumerated in the bill itself, asks for a restraining order. If time has not permitted him or the corporation to avail itself of the existing governmental machinery for the settlement of a labor dispute, he recites that as one of his facts, which is a full compliance, of course, with the previsions of section 8, which makes it a condition precedent that every remedy must be exhausted to settle the strike before the injunction will issue." (Emphasis added.)

"he who seeks justice must do justice" should apply in labor disputes as well as in other judicial controversies. 17

To construe the section therefore as requiring but one of the three methods to be used, when the other two are equally available, would emasculate the language and would defeat the purpose and the policy of the statute.

It would do this by inviting semblance of compliance without its substance, motion of settlement without progress toward it, In railway disputes, the first short step in the succession provided by the Railway Labor Act could be taken and the remainder then, could be hurdled by injunction. A party always could negotiate, that is, engage in collective barraining. 18 and thereby be relieved of the requirements, under Section 8, of mediation and Thus, in this case, under the construction of the Court of Appeals, when respondent completed negotiations without the aid of mediation, there was no need to go on with medi-In the court's view compliance with one of the specified methods satisfies the full requirements of Section 8.19 Yet negotiation, in the sense of bargaining collectively, under the Railway Labor Act is an obligation imposed by law. Section 2. Ninth; also First, Second; Virginian Ry. v. System Federation No. 40, 300 U. S. 515, 548; ef. Texas & N. O. R. R. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548; General Committee of Adjustment of the Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R. R., 88 L. ed. 104, 108. Obviously, if the view of the Court of Appeals is right, the condition requiring "every reasonable effort to settle" the dispute becomes a dead letter in railway labor disputes, since no more would be required by its terms in that application than is called for by the first condition which demands compliance with legal obligations. Respondent, however, while apparently agreeing with the Court of Appeals that compliance with one method is sufficient, relies not only upon its negotiation, but also upon its participation in

^{17.75} Cong. Rec. 5464. It was partly for fear of the effects of requiring compliance with Section 8's provisions, upon interruption of service, that Mr. Beck, who led opposition to the bill, urgently advocated an amendment exempting public utilities. 75 Cong. Rec. 5503-5504.

¹⁸ It may be assumed that the negotiation must be done in good faith, as is true under the National Labor Relations Act, cf. e.g., N. L. R. B. v. Pilling & Son Co., 119 F. 2d 32 (C. C. A.).

^{19 &}quot;The employer is not compelled to avail himself of all three methods; any one of them will fulfill the requirements. Thus in Mayo v. Dean, 82 F. 2d 554, 556. (C. C. A.) it was held that the employer is not obliged to propose both mediation and arbitration." 132 F. 2d 265, 271.

mediation. This serves it in no better stead. The section is not disjunctive as to arbitration, but conjunctive as to negotiation and mediation. The case is one, so far as both language and policy go, of one or all.²⁰

Respondent's final contention, in this phase of the case, is the most insistent. It is that if "voluntary arbitration," as the term is used in Section 8, encompasses arbitration under the Railway Labor Act, by that fact the arbitration ceases to be "voluntary" and the latter Act's requirement that it be so is violated. In short, it is said the effect is to force respondent to submit to compulsory arbitration.

Without question, as respondent says, arbitration under the Railway Labor Act is voluntary. Section 7, First, requires the machinery to be put in motion by agreement of the parties. A proviso also declares, "That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise." 45 U. S. C. § 157, First. It is clear, therefore, that the Railway Labor Act's purpose is not to impose upon the parties a legal duty to arbitrate, enforceable as is the duty to bargain collectively imposed by Section 2, Ninth, discussed above. And if the effect of bringing that form of arbitration within the mandate of Section 8 of the Norris-LaGuardia Act. were to create such a duty, so enforceable, respondent's contention would be more in point. But it does not do that. And the contention that it does entirely misconceives the effect of Section 7, First, of the Railway Labor Act; and confuses "violation" of its terms with failure to comply with those of Section 8 of the Norris-LaGuardia Act. The proviso of Section 7, First, and the requirement of submission by agreement were in force substantially in their present form under the Railway Labor Act of 1926. 44 Stat. 582. It was exactly in the light of these provisions and with the intent, as has been shown, to make it include arbitration under the Railway Labor Act that Section 8 used the term "voluntary arbitration." Obviously there was no purpose in doing so to contradict the terms of both statutes and label "voluntary" what in fact is compulsory. Nor was this the effect. Section 7, First, merely provides that failure to arbitrate shall not be construed as a violation of any legal obligation imposed upon the

²⁰ Cf. note 11 supra.

party failing by that Act or otherwise. Respondent's failure or refusal to arbitrate has not violated any obligation imposed upon it, whether by the Railway Labor Act or by the Norris-LaGuardia Act. No one has recourse against it by any legal means on account of this failure. Respondent is free to arbitrate or not, as it chooses. But if it refuses, it loses the legal right to have an injunction issued by a federal court or, to put the matter more accurately, it fails to perfect the right to such relief. This is not compulsory arbitration. It is compulsory choice between the right to decline arbitration and the right to have the aid of equity in a federal court.

True, this deprives respondent of a protection to which it might have been entitled if the condition had not been imposed. But that is true of each of the section's conditions. And it is hardly more true with respect to one condition than with respect to others. Mediation, or for that matter negotiation, does not become compulsory because without them or either of them injunctive relief cannot be had. Neither does arbitration.

Nor does it follow, as respondent seems to imply, that it is left without remedy. Other means of protection remain. Suits for recovery of damages still may be brought in the federal courts, when federal jurisdiction is shown to exist. statutes supply criminal sanctions, enforceable in the federal courts, against persons who interfere in specified ways with the operation of interstate trains or destroy the property of interstate railroads. Cf. 18 U. S. C. § 412(a). With these and other remedies that may be available we are concerned no further than to point out that respondent's failure to observe the requirements of Section 8 has not left it without legal protection. That failure has deprived it merely of one form of remedy which the Congress, exercising its plenary control over the jurisdiction of the federal courts;21 has seen fit to withhold. With the wisdom of that action we have no concern. It is enough, for its enforcement, that it is written plain and does not transcend the limits of the legislative power. Cf. Lauf v. E. G. Shinner & Co., 303 U. S. 323.

The fact is that respondent complied with the requirements of both Section 8 and the Railway Labor Act in all but the one essential respect. It recognized the employees' designated representatives, negotiated with them, engaged in mediation until

²¹ Cf. Lockerty v. Phillips, 319 U. S. 182, and authorities cited.

it was terminated by the Board as the statute required. When it came, however, to the final and crucial step of arbitration, it declined to go forward as Section 8 requires if, later, injunctive relief is to be had. Whether the refusal was motivated by distrust of the Board,²² by a desire to escape the binding effect of an award,²³ by preference for some other possible procedure,²⁴ or merely by respondent's mistaken view of the section's requirements is not material. Arbitration under the Railway Labor Act was available, afforded a method for settlement Congress itself has provided, and until respondent accepted this method it had not made "every reasonable effort to settle" the dispute, as Section 8 requires.

It remains to refute a further basis for the ruling of the Court of Appeals. This was that, in accordance with its previous decisions, Section 8 does not apply when violence is involved. The terms of the Section offer no support for such a view.²⁵ And, if exceptions exist, to find one in the circumstances shown by this record would be to invert the statutory order of things. The purpose of the section is to head off strikes and the violence which too often accompanies them, by requiring the statutory steps to be taken before the aid of federal courts is sought in equity. Denial of that assistance is the sanction the statute affords to secure performance of the prescribed preventive measures. To give it,

²² Respondent's brief contains the following:

request an impartial body, namely: an emergency board, to hear the evidence and decide the issues involved.

[&]quot;There is no presumption that this governmental agency would be fair, just and impartial, in the conduct of the arbitration, and with the experience which the respondent had had in the mediation, it could not be charged with bad faith in refusing to sign an arbitration agreement, where the arbitration proceedings were to be conducted under the same atmosphere.

[&]quot;Respondent has always insisted upon a fair and impartial hearing of this labor dispute before a body which has no connection with either the Brother-hood interests or the railroad interests, and to this date it has been unsuccessful to have its case presented to a body of that character." (Emphasis added.)

²³ Cf. note 10 supra; note 24 infra.

²⁴ When the Mediation Board terminated its services, respondent first suggested submission to "some impartial fact-finding commission," but for advisory action only. Later it repeatedly urged appointment of an emergency board under Section 10 of the Railway Labor Act, 45 U. S. C. § 160, 44 Stat. 586-587, 48 Stat. 1198. Under the section, if a dispute not adjusted threatens in the Board's judgment substantially to interrupt interstate commerce, the Board shall notify the President who, in his discretion, may create a board to investigate and report concerning the dispute.

²⁵ Frankfurter and Greene, The Labor Injunction (1930) 215.

12 Bro. of Railroad Trainmen, etc., et al. vs. T. P. & W. R. R.

when they have not been taken, not only violates the section's terms. It defeats the purposes they were to accomplish and which, when achieved, make unnecessary invocation of the court's aid.

In general the Act was not intended to interfere with the power to restrain violent acts.26 And it was contemplated expressly the court might intervene to prevent them, when the particular circumstances show the complainant has had no opportunity to comply with such requirements as those of Section 8.27 But one major purpose of the Act was to prevent the use of injunction improperly as a strikebreaking implement.28 And the discussion of Section 8 in the Congressional debates shows that, while it would not apply if on the facts the complainant could not meet its terms, it was intended to apply, when he had had ample opportunity but refused to do so.29 This is clear not only from Representative O'Connor's "clean hands" characterization of the section.30 but also from the general character of the discussion regarding it. Most, if not all, of the objection was upon the mistaken view that Section 8 would apply even though the complainant might have no notice or knowledge of the facts calling for him to take the conciliatory steps before seeking injunctive relief.31 What has been said above shows this was not the intent or effect of the section. There was indeed no expression of concern for the complainant who, having full opportunity to comply with the section, might refuse deliberately and steadfastly to do so. On the contrary, it appears to have been understood clearly he would be remitted to other forms of relief not touched by the Act.

In view of the disposition we have made of the case, we have not determined the other issues which were presented. Some are of such importance they should not be decided in advance of necessity for determining them. That necessity is not present in this case. Accordingly, we express no opinion concerning those issues.

The judgment is reversed and the cause is remanded for further proceedings in conformity with this opinion.

²⁸ Cf. 75 Cong. Rec. 5478.

²⁷ Cf. note 16 supra; 75 Cong. Rec. 5508.

²⁸ Cf. 75 Cong. Rec. 5478.

²⁹ Cf. note 16 supra; 75 Cong. Rec. 5508.

³⁰ Cf. note 17 supra and text.

³¹ Cf. 75 Cong. Rec. 4688, 5471, 5508, setting forth the objections of opponents to the bill, with the replies of its sponsors at 4760, 5508.